

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

District of Columbia Water and Sewer Authority,)

Complainant,)

v.)

Case No. 01-A-01

American Federation of Government Employees)
(AFGE), Locals 631, 872, 2553; American)
Federation of State, County and Municipal)
Employees (AFSCME), Local 2091; National)
Association of Government Employees (NAGE),)
Local R3-05 and 06,)

Respondents)

AMENDED ARBITRATION REVIEW REQUEST¹

1. Complainant in this matter is the DC Water and Sewer Authority ("DCWASA") located at 5000 Overlook Avenue, S.W., Washington, DC 20032; Stephen Cook, Labor Relations Manager may be contacted regarding this matter at (202) 787-2232.
2. The following unions are parties to, and are Respondents in this matter:

David Peeler, President, AFGE Local 2553
2908 Lumar Drive, Fort Washington, MD 20744
(202) 264-3873

¹ Amended pursuant to PERB Notice of Filing Deficiency dated November 8, 2000.

Barbara J. Milton, President, AFGE Local 631
P. O. Box 54585, Washington, DC 20032
(202) 787-2405

Michelle Hunter, President, NAGE Local R3-05 & 06
317 South Patrick Street, Alexandria, VA 22314
(202) 787-2168

Jocelynn Johnson, President, AFGE Local 872
807 Tewkesbury Place, N.W., Washington, DC 20012
(202) 354-3674

James E. Ivey, President, AFSCME Local 2091
P. O. Box 90185, Washington, DC 20090-0185
(202) 787-2077

3. The arbitrator in this matter is Andrew M. Strongin, Permanent Umpire ("Arbitrator"), P. O. Box 5779, Takoma Park, MD, 20913, (301) 562-2866.
4. Complainant DCWASA is a party to a grievance arbitration and is aggrieved by an arbitration award issued by the Arbitrator who serves as the Permanent Umpire between Complainant and its unions pursuant to the parties' collective bargaining agreement entitled "Master Agreement on Working Conditions" ("Agreement").
5. The arbitration award ("award") at issue in this Arbitration Review Request is Grievance: 2091-0918-1 (P. Lee Discipline Appeal) issued by the Arbitrator on October 11, 2000. This arbitration award is annexed as "Exhibit A."
6. DCWASA asserts that the Arbitrator was without authority or exceed the jurisdiction granted in rendering the award at issue. DCWASA makes this assertion in accordance with D.C. Code Section 1-605.2(6). The award contains the following language that constitutes the basis for the instant Arbitration Review Request:

Although the Union did not grieve the disputed actions until September 13, beyond the 5-day filing period established by Article 52, Section B, Step 1, the Authority's Step 1 response does not raise any defense as to the untimeliness of the grievance, and there is no indication in this record that the Authority ever raised such a defense at any time prior to the instant hearing. In the Umpire's judgment, the Authority's failure to raise the timeliness issue prior to the instant hearing must be viewed as a waiver of that defense.

The Arbitrator added language to Article 52 of the Agreement between DCWASA and its unions and was not granted the authority to do so by the parties of the Agreement. Specifically, Article 52 of the Agreement does not impose a

requirement that DCWASA must raise a procedural defense, such as untimeliness, at Step 1 of the grievance procedure or at any other Step in the grievance procedure. In contrast, Article 53 of the Agreement imposes upon DCWASA the requirement to raise procedural defenses at Step 2 of the grievance procedure contained in that Article. The parties to the Agreement negotiated separate Articles concerning the manner by which grievances are to be handled and differ greatly from one another. The Arbitrator was not authorized by the parties to apply the language of Article 53 to Article 52. The Agreement Articles at issue are annexed at "Exhibit B." The award adversely impacts DCWASA as it permits grievances filed by AFSCME to continue where such grievances were clearly untimely and should have been dismissed by the Arbitrator.

DCWASA also asserts that the Arbitrator exceeded the jurisdiction the parties conferred upon him pursuant to the Agreement. Specifically, the Arbitrator is empowered to act as the parties' "Permanent Umpire" pursuant to Article 52, Section C, of the Agreement. Under this Article, the Arbitrator has jurisdiction upon only those matters that the parties agreed to be adjudicated in an expedited fashion. Article 53 of the Agreement is reserved, *inter alia*, for matters having general applicability to all DCWASA unions. Matters falling under Article 53 of the Agreement are adjudicated by an arbitrator that is selected from a panel of arbitrators supplied by the Federal Mediation and Conciliation Service. Under the parties' Agreement, those arbitrators are conferred the jurisdiction to handle matters having general applicability to all DCWASA unions.

In August 2000, the Arbitrator mediated a dispute that resulted in a "fast track" format for handling the parties' outstanding grievances. Under this format, the unions agreed to be bound by any arbitration awards issued thereby, which is the practice normally applied to matters handled under Article 53. DCWASA asserts, nevertheless, that the Arbitrator exceeded his jurisdiction by applying language contained only in Article 53 to a matter that was grieved under Article 52. Inasmuch as DCWASA's unions are bound by this award, the Arbitrator's impermissible act of exceeding his jurisdiction in this matter has, in effect, amended the Agreement.

Finally, the Agreement, in Articles 52 and 53, provide the same grounds for appealing arbitration awards as enumerated in D. C. Code Section 1-605.2(6) and PERB Rule 538.3. As such, the Arbitrator was on notice that he was without authority and exceeded his jurisdiction by applying terms contained only in Article 53 to a matter that could only be adjudicated through Article 52 or the parties' Agreement.

7. In addition to the foregoing, the Arbitrator set aside the long-standing practice throughout the District of Columbia of imposing suspensions for misconduct measured in work days. In a previous award, the Arbitrator reduced a penalty of termination to a thirty (30) day suspension. Consistent with long-standing practice, DCWASA implemented the suspension utilizing work days. AFSCME grieved this

action, leading to the arbitration award at issue. The Arbitrator ignored the practice of work day suspensions, electing to have the thirty (30) day suspension measured in calendar days. According to the Arbitrator, an argument regarding work days versus calendar days was not interposed during the prior arbitration. This logic is flawed inasmuch as termination was the penalty in question during the prior arbitration. DCWASA again asserts that the Arbitrator lacked the authority or exceeded his jurisdiction to nullify a long-standing practice.

8. DCWASA therefore prays for relief of the defective award issued by the Arbitrator as it contains language that impermissibly amends the Agreement between the parties and unilaterally changes a long-standing practice.

Respectfully submitted,

A handwritten signature in black ink that reads "Stephen Cook". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

Stephen Cook
Labor Relations Manager

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November 2000, the foregoing Amended Arbitration Review Request was sent by U.S. mail to:

Andrew M. Strongin, Esq.
P. O. Box 5779
Takoma Park, MD 20913



Roger A. Patterson

David Peeler
President
AFGE Local 2553
2908 Lumar Drive
Fort Washington, MD 20744

Barbara J. Milton
President
AFGE Local 631
P. O. Box 54585
Washington, DC 20032

Michelle Hunter
President
NAGE Local R3-05&06
317 South Patrick Street
Alexandria, VA 22314

Jocelynn Johnson
President
AFGE Local 872
807 Tewkesbury Place, N.W.
Washington, DC 20012

James E. Ivey
President
AFSCME Local 2091
P. O. Box 90185
Washington, DC 20090-0185

AFFIDAVIT OF ROGER A. PATTERSON

I, Roger A. Patterson, hereby affirm the following:

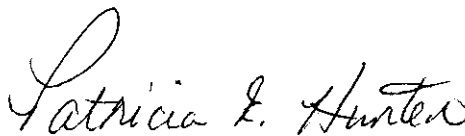
1. I have personal knowledge of the matters set forth in this affidavit.
2. I am currently employed by the District of Columbia Water and Sewer Authority ("DCWASA") as a Labor Relations Specialist in the Human Resources Department. I have served in this capacity since February 22, 2000.
3. DCWASA received from Andrew M. Strongin, Permanent Umpire, an arbitration award cited as: Grievance: 2091-0918-1 (P. Lee Discipline Appeal). This award was received by Labor Relations Manager Stephen Cook no earlier than October 11, 2000, the date that appears on the arbitration award. It is my knowledge and belief that this award, along with others was hand-delivered to the parties during an arbitration hearing.

I have read the foregoing affidavit and it is true and accurate to the best of my knowledge and belief.



Roger A. Patterson

Sworn to and subscribed before me this 31st day of October 2000.



Notary Public

My Commission Expires:

PATRICIA E. HUNTER
Notary Public District of Columbia
My Commission Expires December 14, 2004

**BEFORE
ANDREW M. STRONGIN
PERMANENT UMPIRE**

EXHIBIT A

October 11, 2000

In the Matter of the Arbitration between-

**AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES (AFGE), LOCAL 631, 872, 2553;
AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES
(AFSCME), LOCAL 2091;
NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES (NAGE), LOCAL R3-05 AND 06**

-and-

**Grievance: 2091-0918-1
(P. Lee Discipline Appeal)**

**DISTRICT OF COLUMBIA WATER AND
SEWER AUTHORITY**

APPEARANCES:

For WASA:

**Stephen Cook
Labor Relations Manager
D.C. Water And Sewer Authority
5000 Overlook Avenue, SW
Room 307
Washington, DC 20032**

For AFSCME, Local 2091:

**James Ivey
President
AFSCME Local 2091
P.O. Box 90185
Washington, DC 20090**

MEMORANDUM DECISION

This grievance involves the events that followed the issuance of this Umpire's August 10, 1999 Decision and Award in the Patrick Lee Discharge arbitration. By way of background, Mr. Lee was terminated pursuant to a May 21, 1999 Notice of Final Decision. In that Final Decision, the Authority's Assistant General Manager, Betty L. Cheatham, wrote that she concurred with a Neutral Party report, and accepted the recommendations contained therein, finding that Mr. Lee should be suspended 15 working days for a February 4, 1999 incident; that he should be suspended another 15 working days for a March 9, 1999 incident; and, that he should be terminated immediately for an April 6, 1999 incident. Ms. Cheatham wrote further that, "[R]ather than implementing the suspensions, it would be in the best interest of the Authority to terminate your employment. Accordingly, your employment will be terminated effective immediately." Subsequently, the parties arbitrated Mr. Lee's discharge, in a proceeding that expressly dealt only with the circumstances of the April 6, 1999 incident. The arbitration, by agreement of the parties, did not address the February and March incidents referenced in the Final Decision. That arbitration proceeding culminated with the Umpire's reinstatement of Mr. Lee, "subject to a 30-day disciplinary suspension without pay." In the action giving rise to the instant grievance, following issuance of the August 10 Award, the Authority notified Mr. Lee on August 27, 1999 that the 30-day suspension would be enforced as one of 30 work days, as opposed to calendar days, and that it was implementing the two 15 work day suspensions referenced in the Final Decision. The Union grieved this action at Step 1 on September 13, 1999.

With respect to the 30-day suspension, the Union contends that the Authority wrongfully enforced it as a work day suspension, rather than a calendar day suspension. In so arguing, the Union relies on Article 53, Section G, which provides that, "'Days' means calendar days, unless stated otherwise."

With respect to the two 15 work day suspensions, the Union essentially contends that the Authority has waived its right to implement them, by virtue of Ms. Cheatham's May 21, 1999 Notice of Final Decision, and that, in any event, the Notice is deficient pursuant to Article 51, Section P. That provision requires that, "The final decision shall also specify the effective date of this action."

The Authority first contends that the instant grievance is untimely, as the grievance is based on the contents of the August 27, 1999 letter, whereas the Step 1 grievance was not filed until September 13. Indeed, the Authority contends that the Union knew of the two 15-day suspensions as early as May 21, 1999. On the merits, the Authority asserts that it never waived its right to implement the two 15 work day suspensions, and only held them in abeyance in light of the termination action. Additionally, the Authority contends that Article 51, Section P addresses the effective date of the Final Decision, which was May 21, not the implementation dates of the suspensions. As for the 30-day suspension, the Authority contends that Article 53 does not apply to Article 51, and that the Authority routinely issues disciplinary suspensions in terms of work, and not calendar, days.

Turning first to the question whether the reduction of Mr. Lee's termination to a 30-day disciplinary suspension was intended to be measured by calendar days or work days, that suspension is to be measured by calendar days. In so ruling, the Umpire does not rely on Article 53, Section G. That provision played no role in the Umpire's discretionary action in reducing the termination action to a 30-day suspension. At the termination hearing, no issue was raised by the parties with respect to the difference between the two, and the Umpire fashioned a remedy appropriate to the circumstances and in keeping with the parties' commitment to progressive discipline. The Umpire did not specify that the suspension was to be in calendar--as opposed to work--days, because he believed it to be understood.

As for the two 15 work day suspensions, the May 21 Final Decision

makes plain that the Authority concurred with the neutral party, and accepted the recommendations contained in the Neutral Party Report that Mr. Lee be issued two separate 15 work day suspensions for the February 4 and March 9 incidents. The Authority did not implement those suspensions because, in light of the termination, there was no reason to implement the suspensions at that time. There is, however, no basis for concluding that the Authority ever evinced an intention to waive its right to implement those suspensions in the event the termination action was disturbed upon arbitration. In the Umpire's judgment, nothing in the Agreement, including Article 51, Section P, precludes the Authority from enforcing the suspensions upon the reduction of the termination action by the Umpire.

At the same time, the Authority's May 21 Final Decision tolled the statute of limitations for the Union to grieve the suspensions. Just as the termination action rendered the implementation of the suspensions moot, at least temporarily, the Authority's action in withholding implementation of the suspensions rendered moot, at least temporarily, any basis for filing a grievance over those suspensions. Once the Authority notified Mr. Lee and the Union on ~~August 27, 1999 that the suspensions would be implemented,~~ the Union had a new right to grieve those suspensions. ~~Although the Union did not grieve the disputed actions until September 13, beyond the 5-day filing period established by Article 52, Section B, Step 1, the Authority's Step 1 response does not raise any defense as to the untimeliness of the grievance, and there is no indication in this record that the Authority ever raised such a defense at any time prior to the instant hearing. In the Umpire's judgment, the Authority's failure to raise the timeliness issue prior to the instant hearing must be viewed as a waiver of that defense.~~

Finally, Article 52, Section C, provides that:

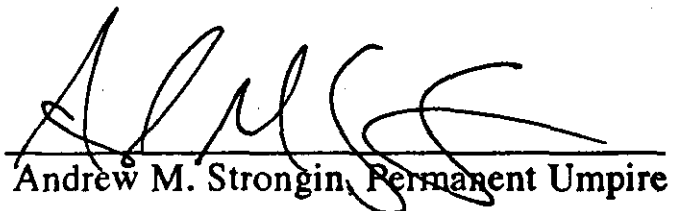
The loser shall pay the fees and costs of the umpire who heard the case.... In an effort to clarify the term "losing" party, the parties agree that a loss by management is an alteration or reduction in management's proposed action or the event that gave

rise to the grievance. In cases where it is unclear whether or not a party has lost the case, the umpire shall apportion the cost.

In the Umpire's judgment, and in light of the foregoing, neither party is, in the parlance of Article 52, Section C, the clear "loser" in this case. Accordingly, pursuant to the Umpire's express authority to apportion his fees and costs, the Umpire concludes that the parties shall share equally those fees and costs.

DECISION

The grievance is sustained in part and denied in part. Grievant's 30-day disciplinary suspension for the April 6, 1999 incident shall be served as one of 30 calendar days, and not work days. The Authority acted within its rights in implementing the two 15 work day suspensions arising out of the February and March 1999 incidents. The Union's grievance over the implementation of those suspensions, however, is deemed timely for failure of the Authority to assert its timeliness defense at any time prior to the instant hearing. Pursuant to Article 52, Section C, the parties shall share equally the fees and costs of the Umpire.



Andrew M. Strongin, Permanent Umpire

Takoma Park, Maryland

EXHIBIT B

MASTER AGREEMENT ON WORKING CONDITIONS

between

**American Federation of Government Employees (AFGE)
Local 631, 872, 2553**

**American Federation of State, County and
Municipal Employees (AFSCME)), Local 2091**

**National Association of Government Employees (NAGE)
Local R3-05 and 06**

and

District of Columbia Water and Sewer Authority

June 4, 1998

ARTICLE 50 SAVINGS CLAUSE

In the event any Article, Section, or portion of this Agreement shall be rendered or declared invalid by any existing or subsequently enacted legislation, or by decree of a court or higher authority of competent jurisdiction, such decision shall apply only to the specific Article, Section, or portion thereof specified in the decision, and shall not invalidate the remaining portions hereof, and they shall remain in full force and effect. Upon issuance of such decision, the Employer and the Union agree to immediately enter into negotiation for a substitute for the invalidated Article, Section or portion thereof.

ARTICLE 51 DISCIPLINE

Section A

Discipline shall be imposed on employees for cause, as defined in the attached "Table of Appropriate Penalties" in Appendix A of this Agreement on corrective and adverse action, except that no corrective or adverse action will be imposed upon an employee without first giving the Union an opportunity to counsel the employee.

Section B

Discipline will be appropriate to the circumstances, and shall be corrective rather than punitive in nature, and shall reflect the severity of the infraction. After discovery of the incident, the investigation shall be conducted in a timely manner, and discipline shall be imposed upon the conclusion of any investigation of the gathering of any required documents, consistent with the principles of progressive discipline and in accordance with section C of this article.

Section C

For the purposes of this Article, discipline shall include the following:

1. Corrective Actions: Written reprimands or suspensions of thirty (30) days or less;
2. Adverse Actions: Removal, suspension for more than thirty (30) days, or a reduction in rank, or grade, or pay, for cause.

Section D

Corrective and adverse actions shall be corrective rather than punitive and shall reflect the severity of the infraction. No corrective or adverse action shall be commenced more than 45 days (not including Saturdays, Sundays, or legal holidays) after the date that the agency knew or should have known of the act or occurrence allegedly constituting cause. When an employee has engaged in conduct where he/she is subject to more than one (1) violation, the employee will be charged with the single most appropriate penalty as set forth in Appendix A of this Agreement.

Section E

Employees may grieve these actions through the negotiated grievance procedure. Disciplinary actions involving warning notices or suspensions of thirty (30) days or less will be processed pursuant to the expedited grievance procedure in this Agreement.

Section F

If an employee grieves an action involving a suspension of more than thirty (30) days, a reduction in rank or pay, or removal, the grievance will be initiated as Step 3 (to the General Manager's level) of the negotiated grievance procedure.

Section G

Employees requesting to reply to disciplinary action will be informed of their right to have present a Union representative or representative of their choosing.

Section H

Disciplinary action imposed on probationary employees shall be governed by this Article. However, the removal for cause of an employee during his or her probationary period is neither grievable nor appealable, and shall be done in accordance with the Authority's rules and regulations.

Section I

If a supervisor has reason to discipline an employee, it shall be done in private and in a manner that will not embarrass the employee before other employees or the public.

Section J

Except in the special circumstances referred to in Section K of this article, an employee

for whom adverse action is proposed shall be entitled to at least thirty (30) days advance written notice of proposed adverse action, or fifteen (15) days if corrective action is proposed. The notice will identify the cause and the reasons for the proposed action.

Section K

In any circumstances in which the Authority has reasonable cause to believe that an employee's conduct is an immediate hazard to the Authority, to the employee involved, or other employees, or is detrimental to the public health, safety, or welfare, or if an employee is charged, by a competent legal jurisdiction, with a felony related to the job, the Authority shall place the employee on administrative leave pending an expedited hearing. This hearing shall be in accordance with Article 52, Expedited Grievance and Arbitration, of this Agreement. The employee shall be provided with notice and an opportunity to be heard.

Section L

Recognizing that the Union is the exclusive representative of the employees in the bargaining unit, the Authority shall in good faith notify the Union of proposed disciplinary actions. This notification shall be a copy of the proposed disciplinary action. Further, the Authority agrees to notify the employee of his/her rights to representation in corrective or adverse actions. The material upon which the proposed discipline is based shall be made available to the employee and his/her authorized representative for review. The employee and/or his/her authorized representative will be entitled to receive copies of the material.

Any information that cannot be disclosed to the employee and/or his/her representative, shall not be used to support the proposed action.

Section M

Except in the special circumstances referred to in Section K above, an employee shall be entitled to at least ten (10) days to answer the notice of proposed corrective or adverse action. The employee shall, upon request, be granted an opportunity to be heard prior to a final decision. This opportunity to be heard shall be afforded by a person designated as a neutral party, by the General Manager or his/her designee.

The neutral party shall not be in the supervisory chain between the proposing and/or deciding official(s) and shall not be subordinate to the proposing official. The neutral party shall review the employee's answer, discuss the proposed action with the employee and/or his/her representative, and appropriate representatives of the Authority, and make recommendation to the deciding official who will act upon the recommendation. The employee's use of the neutral party process is optional.

Section N

The person proposing a disciplinary action shall not be the deciding official unless the proposing official is the General Manager.

Section O

Except in the special circumstances referred to in Section K above, an employee against whom corrective or adverse action has been proposed shall be kept in an active duty status until the arbitrator renders a final decision.

Section P

The deciding official shall issue a written final decision within forty-five (45) days from the date of receipt of the notice of proposed action. The deciding official shall either sustain the penalty, reduce it, or dismiss the action with or without prejudice, but shall not increase the penalty. The forty-five (45) day period for issuing a final decision may be extended by agreement of the employee and the deciding official. If the proposed action is sustained in whole or in part, the written decision shall identify which causes have been sustained and which have been dismissed, describe whether the proposed penalty has been sustained or reduced, and inform the employee of his/her right to appeal or grieve the decision, and the right to be represented. The final decision shall also specify the effective date of this action.

Section Q

Notice of final decision, dated and signed by the deciding official, shall be delivered to the employee on or before the time the action is to be effective. If the employee is not in a duty status at that time, the notice shall be sent to the employee's last known address by certified or registered mail.

Section R

Except as provided in Section H of this Article, employees may grieve actions through the negotiated expedited or general grievance procedure.

Section S

If a final decision is grieved through the negotiated grievance procedure, a written grievance shall be filed with the deciding official.

Section T

In appropriate cases, consideration shall be given to correcting the problem through the use of the Employee Assistance Program as described in Article 14 of this Agreement.

Section U

In selecting the appropriate penalty to be imposed in a corrective or adverse action, consideration shall be given to any mitigating or aggravating circumstance where appropriate, and the results of such consideration shall be in writing and placed in the corrective or adverse action file. Consideration of an employee's prior record for the purpose of determining penalties shall be subject to the following time limits:

1. A reprimand shall be considered a prior offense and may be cited only within two years of the effective date of the reprimand, and only if it was not withdrawn earlier by the deciding official issuing the reprimand, by a court, or by other competent authority.
2. A prior corrective or adverse action shall be considered a prior offense and may be cited only within three (3) years from the effective date of the action, and only if not withdrawn earlier by the deciding official issuing the action, by a court, or by other competent authority.

Section V

Whenever an employee is questioned by a supervisor with respect to a matter for which a disciplinary action is intended against the employee, the employee may, upon request, consult with a Union official or other representative. Upon such request, the supervisor will stop the questioning until the employee can consult with such representative, but in no event will such questioning be delayed beyond the end of the employee's following shift. When and if questioning is resumed, an employee may have a Union official or other representation present.

ARTICLE 52

EXPEDITED GRIEVANCE AND ARBITRATION PROCEDURE

In addition to the general grievance procedure of this Agreement, the parties will use an expedited grievance and arbitration procedure for all grievances involving a disciplinary penalty of 30 days or less, or a question of correct wage payment to a particular employee (e.g., the calculation of overtime or the appropriate pay rate for the work performed).. These cases shall be processed with the utmost speed and attention in order to assure prompt resolution of the issues raised by the employee. With this in mind, the parties agree that the same arbitrator may hear multiple cases on the same day.

Section A: General

Grievances may be filed at whatever step resolution is possible. Any grievances not advanced to the next step by the Union representative or the employee within the time limit specified in that step shall be deemed abandoned, unless otherwise agreed upon by the parties. If the Authority does not respond within the time limit specified within each step, the employee may invoke the next step, treating the lack of response as a denial of the grievance. The parties can extend time limits upon mutual agreement.

The employee shall remain in an active pay status until the arbitrator's final decision is rendered.

No witnesses shall be heard if the arbitrator determines his/her testimony is not relevant. Such witness(s) shall be present only for the time necessary for them to present evidence. When discussions and hearings required under this procedure are held during work hours of the participants, they shall be excused with pay for this purpose. Either party has the right to an official record of the hearing, or to have a verbatim stenographic record made at its own expense. The expense may be shared by mutual agreement.

The Authority shall provide current and accurate information and documentation, to all requests for information related to the preparation and presentation of grievances.

Section B: The Grievance Process

Step 1. If an employee disputes the imposition of discipline other than discharge, a suspension of more than 30 days, or the wage payment made to him/her, or once the occurrence of events giving rise to the grievance becomes known to the employee or Union, the employee will orally and/or in writing raise the matter within five (5) working days with the supervisor or manager who imposed the action. The supervisor or manager receiving this complaint shall respond within five (5) working days after presentation of the grievance.

Step 2. If the grievant is not satisfied with the response pursuant to Step 1, or does not receive a timely response within five (5) working days, the grievant shall file a written grievance with the Human Resources Director. The matter will be assigned to a Bureau Chief other than the party who implemented the action in question. The Human Resources Director will not assign this Step of the grievance procedure to any Bureau Chief who participated in the challenged action or who immediately informs the Human Resources Director that he/she cannot satisfy the timetables in the grievance procedure. Requests from the Union for a Bureau Chief other than the one assigned to resolve the grievance, shall be made to the Human Resources Director within three (3) days after receipt of notification of an appointed Bureau Chief. The Bureau Chief assigned to resolve the written grievance may review the matter based on documents, further investigate the facts, and/or conduct meetings or conferences about the issue as he/she may deem necessary or appropriate. In any event, the response to the written grievance must be completed and delivered to the grievant and/or his/her Union within ten (10) working days after it has been filed with the Human Resources Director.

Step 3. If the grievance remains unsettled or if the response is not timely, the Union has seven (7) working days thereafter in which to make a written request for arbitration. This request for arbitration shall be delivered to the Human Resources Director for processing. The grievances submitted for arbitration shall be heard by the permanent arbitrator (umpire) at the first regular monthly hearing day after such filing. Arbitration requests received ten (10) days or less prior to the arbitrator's monthly scheduled hearing date, shall not be heard during that hearing period. The arbitrator's final decision (award) shall be in writing, and shall set forth the arbitrator's findings, reasoning, and conclusion within thirty (30) days after conclusion of the hearing. A statement of the arbitrator's fee and expenses shall accompany the decision award.

The Human Resources Director is to take administrative action only, and not be a party to the decision making or review process.

Section C: Expedited Arbitration

The parties shall designate a permanent arbitrator (umpire) to hear all cases processed under this procedure. That umpire shall be jointly selected by stipulation, or from a panel of seven choices supplied by the Federal Mediation and Conciliation Service. As a condition of selection, the umpire must reside locally within the metropolitan area, and agree that he/she will:

1. Conduct hearings at the Authority's headquarters building on the same day each month, every month.
2. Issue all decisions within thirty (30) days after the hearing has been completed.
3. Hear all cases presented on the same day, or on the first available day thereafter, if a full day is not sufficient to complete the pending docket of grievances ready for expedited arbitration.

The parties may use the same procedure to select an alternate umpire who will be utilized if the permanent umpire is incapacitated or otherwise unavailable on the regular monthly hearing day. Nine (9) months after the effective date of this Agreement, either party may request the selection of a different permanent umpire or alternate to replace the original one on the first day of the twelfth (12th) months of this Agreement; the successor shall be selected in the same manner as the original, but the original or his/her alternate shall continue to serve until the successor has agreed to accept the retainer and begin conducting regular monthly hearings. The Union shall not incur any arbitration fees for a month when the umpire hears no cases.

The loser shall pay the fees and costs of the umpire who heard the case. If more than one grievance is heard on the same day, the umpire's fees and costs shall be prorated among

the losing parties to those cases. In an effort to clarify the term "losing" party, the parties agree that a loss by management is an alteration or reduction in management's proposed action or the event that gave rise to the grievance. In cases where it is unclear whether or not a party has lost the case, the umpire shall apportion the cost.

Section D: Coordination with other Unions

The Union representing the grievant shall inform the other Unions party to the Master Agreement of any case it may take to the umpire. The Authority shall inform the Unions, in writing, of any changes in the umpire's hearing date. The Authority shall inform the Union, in writing, each month of the cases scheduled to be heard by the umpire and all arbitration decisions (awards). During Step 1 of this procedure, the Authority or any of the Unions may determine that a grievance may affect more than one unit, because it has general applicability, in which case that matter shall be removed from the expedited procedure and processes pursuant to Article 53 (General Grievance Procedure). The results of any case processed pursuant to Article 53 (General Grievance Procedure) shall be binding upon all parties subject to the Master Agreement.

Any Union that is party to the Master Agreement shall be allowed to attend the monthly arbitration hearings as observers.

Section E: Finality

The award of the umpire shall be final and binding. A party to the grievance arbitration proceeding who is aggrieved by the arbitration award may file a request for review with the Public Employee Relations Board (PERB), or any other agency or court of competent jurisdiction. The requests for review shall be filed no later than twenty (20) days after service of the arbitrator's award.

The only grounds for an appeal of a grievance arbitration award are the following:

1. The arbitrator was without authority or exceeded the jurisdiction granted;
2. The award on its face is contrary to law and public policy; or
3. The award was procured by fraud, collusion, or other similar and unlawful means.

ARTICLE 53 GENERAL GRIEVANCE AND ARBITRATION PROCEDURES

Section A: Scope

A grievance is a claim of any alleged violation of this Agreement or applicable provision of the Compensation Agreement, or any alleged misapplication or misinterpretation of Personnel rules and regulations that affect terms and conditions of employment.

Section B: Presentation of Grievances

This procedure is designed to enable the parties to settle grievances at the lowest possible administrative level.

Section C: Categories of Grievances

These are:

1. **Personal.** A grievance of a personal nature requires the signature of the aggrieved employee at Step 2 of this procedure, even if the grievant is represented by his/her Union. In the case of an individual grievant proceeding without Union representation, the Union must be given an opportunity to be present and to offer its views at any meeting held to adjust the grievance.

2. **Group.** A grievance involving a number of employees in the bargaining unit, and may be filed at whatever step a resolution is possible.

3. **Class.** A grievance involving all the employees in the bargaining unit, and may be filed and signed by the Union President or designee directly at Step 3 of this procedures. Grievances so filed will be processed only if the issue raised is common to all unit employees. A class grievance must contain all information specified in Section E, Step 2 of this procedure. The General Manager or his/her designee shall respond in writing within ten (10) days of receipt.

It is contemplated and agreed by the parties that grievances which may arise under the Master Agreement shall be processed by the Union party in whose bargaining unit the complaint arises. Related grievances shall be consolidated for arbitration.

- a. Grievances affecting one unit: In the event the Authority and the Union that filed the grievance are able to reach a settlement agreement on a case that is unique to the Local Union, the settlement agreement shall resolve only that grievance, or matters arising within that Local's bargaining unit.

- b. Grievances affecting more than one unit: Either the Authority or any one of the Unions may designate a case as having general applicability to the other units, or as involving a general policy. Such cases may be settled, but the agreement must be approved and ultimately executed by the other Unions to be effective. Such agreements shall be binding on all of the Unions. If such cases of general applicability proceed to arbitration, the parties agree that the arbitration decision, or decision of any appeal thereof, shall be binding upon the parties throughout all noncompensation units party to the Master Agreement, provided that all of the Unions are given the opportunity to submit amicus briefs to the arbitrator and the reviewing authority, if any. In the absence of a settlement agreement signed by all of the Unions, or a decision by a third party, e.g., a grievance is dropped, any questions of contract interpretation and policy remain open for resolution through other grievances filed by any of the Unions.

Section D: Who May Grieve

Either an employee or the Union may raise a grievance, and if raised by an employee, the Union may associate itself therewith at any time if the employee so desires. Whenever the Union shall raise or be associated with a grievance under this procedure, such a grievance shall become the Union's grievance with the Employer. If raised by the Union, an employee may not thereafter raise the grievance himself or herself; and if raised by the employee, he/she may not thereafter cause the Union to raise the same grievance independently.

Section E: Procedural Steps

Step 1. The aggrieved employee (with or without his/her Union representative) and/or the Union shall orally or in writing present and discuss the grievance with the employee's immediate supervisor, within ten (10) working days of the occurrence of the event giving rise to the grievance becomes known to the employee or Union. The immediate supervisor is to make a decision on the grievance and communicate the decision to the employee or to the Union, or to the representative, in writing, within five (5) working days from the presentation of the grievance.

Step 2. If the grievance remains unsettled, the employee, with or without his/her Union representative, or the Union, shall submit a signed written grievance to the appropriate Bureau Chief or corresponding official. This specific Step 2 grievance shall be the sole and exclusive basis for all subsequent steps. The grievance at this step and every further step shall contain:

- a. A statement of the specific provision(s) of the Agreement alleged to be violated;

- b. The date(s) on which the alleged violations) occurred;
- c. The manner in which the alleged violation(s) occurred;
- d. The specific remedy or adjustment sought;
- e. Authorization by the employee or Union representative, if desired;
- f. The signature of the aggrieved employee or the Union representative, according to the category of the grievance;
- g. Should the grievance not contain the required information, the grievant shall be so notified in writing and granted the opportunity to resubmit the grievance within three (3) working days of such notice.

The Bureau Chief or corresponding official shall respond to the employee in writing to the grievance within five (5) working days of its receipt.

Step 3. If the grievance remains unsettled, the employee and/or Union shall submit the grievance to the Authority's General Manager, or his/her designee. The General Manager or his/her designee shall respond in writing within ten (10) working days of receipt of the grievance. The General Manager may meet with the grievant and/or Union in an attempt to settle the grievance.

Step 4. If the grievance remains unsettled, the Union, within ten (10) working days, from receipt of the General Manager's response, shall advise the General Manager in writing whether the Union intends to request arbitration on behalf of the employee or employees on the matter. Should the Union request arbitration, such request shall include a settlement, setting forth grounds therefore (consistent with Step 2), to be decided by the arbitrator.

Section F: Arbitrator

1. Selection of an arbitrator.

Within seven (7) days from the Authority's receipt of the request from the Union to arbitrate, the Union shall request the Federal Mediation and Conciliation Service (FMCS) to refer a panel of seven (7) impartial arbitrators. Upon receipt of the FMCS panel, the parties will select one of the names on the panel as mutually agreeable, or if there is no mutually agreeable arbitrator, each party alternately strikes a name from the submitted panel until one remains. A coin will be tossed to determine who shall strike first. If none of the submitted arbitrators is acceptable, one (1) new panel may be sought before the selection process begins.

The Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an arbitrator to hear the case if either party refuses to participate in the selection of an arbitrator.

2. The arbitrator shall hear and decide only one (1) grievance in each case.
3. The arbitration hearing shall be informal, and the rules of evidence shall not strictly apply,
4. The hearing shall not be open to the public. Any Union that is a party to the Master Agreement shall be allowed to attend hearings as observers.
5. Witnesses shall be sequestered upon request of either party.
6. Either party has the right to an official record of the hearing, or have a verbatim stenographic record made at its own expense. The expense may be shared by mutual agreement.
7. The arbitrator's award shall be in writing and shall set forth the arbitrator's findings, reasoning and conclusion within thirty (30) days after the conclusion of the hearing, or within thirty (30) days after the arbitrator receives the parties' briefs, if any, whichever is later.
8. The arbitrator shall not have the power to add to, subtract from, or modify the provisions of this Agreement through the award. The arbitrator shall confine his/her award solely to the grounds set forth in Step 2 of this Grievance & Arbitration Procedure.
- ~~9. The award cannot provide relief retroactively to a time before the date of the occurrence of the event upon which the grievance is based.~~
10. The arbitrator's award shall be binding upon both parties. A party to the grievance arbitration proceeding who is aggrieved by the arbitration award may file a request for review with the Public Employee Relations Board (PERB), any other agency or court of competent jurisdiction. The request for review shall be filed no later than twenty (20) days after service of the arbitrator's award. The only grounds for an appeal of a grievance arbitration award are the following:
 - a. The arbitrator was without authority or exceeded the jurisdiction granted;
 - b. The award on its face is contrary to law and public policy; or
 - c. The award was procured by fraud, collusion, or other similar and

unlawful means.

A party that initiates such review and does not prevail shall pay all attorney fees and costs of the prevailing party.

11. A statement of the arbitrator's fee and expenses shall accompany the award.. The fee and expense of the arbitrator shall be borne by the losing party. In cases where it is unclear whether or not a party has lost the case, the arbitrator shall apportion the cost.

Section G: General

1. If the Authority declares a grievance non-grievable/arbitrable, it must make such declaration in writing at Step 2.

2. If the Authority does not respond within the time limit specified in each step, the employee or the Union may invoke the next step, treating the lack of response as a denial of the grievance.

3. All time limits shall be strictly observed unless the parties mutually agree to extend said limits. "Days" means calendar days, unless stated otherwise.

4. The presentation and discussion of grievances shall be conducted at a time and place that will afford a fair and reasonable opportunity for both parties and their witnesses to attend. No witness shall be heard if the arbitrator determines his/her testimony is not relevant. Such witness(s) shall be present only for the time necessary for him/her to present evidence. When discussions and hearings required under this procedure are held during the work hours of the participants, they shall be excused with pay for this purpose. Witness lists shall be exchanged one (1) week before the hearing date.

5. The Authority shall provide current and accurate information and documentation, to all requests for information related to the preparation and presentation of grievances.

ARTICLE 54 PAYSTUB DISTRIBUTION

The Authority shall enclose all distributed payroll check paystubs in sealed envelopes, prior to issuing them to employees. This provision shall take effect within thirty (30) days after the Authority's own payroll department and/or service is operational.