

HHS and NTEU New CBA
Summary of Articles/Changes

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Article 2 – Contract Duration and Termination

- 5-year CBA term (was 3 years), with 4 article mid-term reopener at 2.5 years.

Article 3 – Mid-Term Bargaining

- Local and National Bargaining
 - Redefined local bargaining as matters impacting only 1 NTEU chapter; national bargaining as matters impacting more than 1 NTEU chapter.
 - Local bargaining– New requirement for HHS to pay 100% of travel/per diem for 1 bargaining unit employee representative to travel for bargaining outside of the local commuting area.
- Virtual Bargaining – Bargaining will be virtual at the election of either party.
 - Exception - Carve out for local space-related issues and for national bargaining; guarantees 1 in-person bargaining session (up to 3 consecutive days) at election of either party.
- HHS will maintain an electronic repository of all MOUs.

Article 5 – Employee Rights and Responsibilities

- Broadens the right to be present and have union representation when searching the work area to all matters, whether non-criminal or criminal; applies to searching through the entire work area and not just personal possessions; there must be an official business need to look through the work area.

Article 6 – Employee Space and Facilities

- Reserves NTEU’s right to bargain over space changes, including:
 - moves, common areas, equipment, workstations, the number and size of offices/workstations, workspace assignment, floorplans, workspace sharing, and other amenities.
- Defines space sharing options (e.g., hoteling, hot-desking).
- Adds general space rules.
 - As a general rule, employees who are required to report to their assigned agency worksite 6 or more days, per pay period, will be assigned a dedicated workspace. The parties may bargain for something different.
 - Employees have sole access to their assigned workspace on the days and times they are in the office and assigned to that workspace.
 - Formula for FDA employees to select workspace when there are office moves or workspace sharing solutions implemented (unless other voluntary arrangements are approved): ***Grade + SCD (federal service computation) x percent of time reporting to the traditional office based on 80 hours per pay period in office.***
- New NTEU right to pre-decisional input (PDI) for relocations to a different building, space reconfigurations and/or real estate changes. (This is in addition to and prior to bargaining).

Article 7 – Union Rights

- New language to ensure meetings involving the Federal Employees Viewpoint Survey (FEVS) are conducted as formal meetings and any changes that are implemented based on the FEVS will be subject to notice and bargaining.
- Modified the notice period for formal meetings.
- New right for NTEU to establish a webpage on the HHS intranet.
- New right to advance notice for national surveys of bargaining unit employees and for chapters to get notice of local surveys.

Article 9 – Union Access to Employer Services

- Use of HHS mail/email permitted for “other Union matters”, not just representational matters. No more requirement to furnish HHS with broadcast emails before they are issued; emails may not be libelous or slanderous, or violate the law or HHS security.
- Employees will receive electronic copies of the new CBA and may print them on duty time; hard copies will still be given to the chapters; the CBA will be maintained on the intranet in a searchable PDF format.
- NTEU is entitled to 1/3 of the space on electronic bulletin boards.
- Union offices and other HHS provided equipment and facilities are at no cost to NTEU.

Article 10 – Union Representatives/Official Time

- We retained three full-time 100% official time positions for Chapter 282. We retained the 100% official time positions for Chapters 212 and 254. We added new 100% official time positions for Chapters 210, 229, 230, and one floating position for NTEU National to allocate.
- The steward formula is changed from 1 steward to every 40 bargaining unit employees in the chapter’s jurisdiction (1:40) to:40 for first 200 bargaining unit employees and 1:75 thereafter for 201 bargaining unit employees and above.
 - Chapters retain all current stewards as of the date of the new CBA.
 - All chapters are entitled to at least 2 stewards regardless of the formula.
 - Chapter Presidents are in addition to the formula.
- HHS will provide 25 smart phones to NTEU to distribute to the chapters.
- OTTS is required to request and report/certify official time.

Article 11 – Pay and Benefits

- Codified the student loan repayment program in the CBA.

Article 13 – New Employee Orientation

- The NTEU presentation time is doubled from 20 to 40 minutes at NEOs, as well as to meet with employees who do not attend the NEO.
- Notice of the NEO will include employee names, organizational assignment, POD, title, series, grade, work email.

- NTEU materials and NTEU contact information will be provided electronically by HHS to employees at the NEO, and HHS will provide an electronic copy of the CBA and information on how to obtain a SF-1187.
- NTEU may reserve a room to meet with employees at the NEO, and a virtual meeting room when the NEO is held virtually.

Article 18 – Family Leave

- The regulatory provisions for required medical information for FMLA requests were added to the article.
- New provision to allow submission of the medical certification to next level supervisor, or designated medical professional, instead of the immediate supervisor.
- New provision prohibiting HHS from requiring employees to sign a medical release to discuss/review medical information.
- Added rules for using paid parental leave under the 2021 Paid Parental Leave Act.

Article 20 – Excused Absence/Administrative Leave

- New provision granting up to 1 hour of administrative leave each year for benefits counseling (health, financial, retirement) sponsored by NTEU.
- New provision granting up to 5 days of military leave when returning from active military duty of 42 days or more in support of overseas contingency operations.
- New rules and procedures to comply with the weather and safety leave (WSL) regulations under the Administrative Leave Act of 2016.

Article 21 – Leave Sharing

- Incorporated the FDA Voluntary Leave Bank Program (VLBP) MOU into the CBA.

Article 24 – Child Care Subsidy

- Enshrined the current child care subsidy programs in the collective bargaining agreement; retained the right to bargain to establish child care subsidy programs in OpDivs without a program.
- New requirement to publicize existing programs and their funding/budget each year, with information on how to apply.

- Established a minimum total family income threshold to participate at \$75,000; OpDivs may increase.
- Set forth the rules and how to apply.

- New requirement for an annual meeting with NTEU to discuss program funding and participation, and discussion of programs in LMRC meetings.

Article 25 – Hours of Work

- New Alternate Work Schedule Options/Flexible Work Schedules (FWS).
 - Mid-Day Flex Option for FWS: Employees may work more than one work period in a day with time away from work during the day (e.g., 6am-8am; 10am-4pm) without charge to leave and complete the tour of duty within the flexible bands.
 - Variable Week Schedule – Mimics maxiflex but requires core hours on each workday.

AWS requests will now be normally approved unless it causes an adverse agency impact at the level approved by causing (1) a diminished level of service, (2) insufficient coverage, or (3) increased cost. Any denials will be in writing, stating the reasons.

- New provision that scheduling meetings during the lunch time band (11-2) will generally be avoided, but if it is necessary, employees will be compensated if they miss the 30-minute lunch break.

Article 26 – Telework and Remote Work

- Telework & Remote Work Options.
 - Routine Telework – Up to 8 days per pay period. Must report to agency office twice per pay period (may be full *or partial* days).
 - Episodic/Ad Hoc Telework – Occasional, episodic, special assignments.
 - Remote Work - Full-time at an alternate worksite; report to office less than 16 hours per pay period
 - Remote within the commuting area (45 mi radius)
 - Remote outside the commuting area
 - Telework Reasonable Accommodation – For disabilities that meet the criteria of the Rehabilitation Act of 1973.
 - Temporary Workplace Flexibility – Allows telework for a temporary illness or physical incapacity or to care for a family member recovering from illness/incapacity that does not otherwise meet the formal criteria for reasonable accommodation.

- No presumption against eligibility for telework or remote work; case-by-case decisions; the parties may bargain to identify positions that are presumptively eligible.

- A presumption of eligibility for remote work is granted for employees who previously teleworked full-time in their current job (excludes full-time telework based on a reasonable accommodation, because of the pandemic emergency, and episodic full-time telework).
- Management will consider the impact on its budget for remote work requests (e.g., travel costs). Before denying remote work requests based on budget, management will discuss the issues with the employee and attempt to find a resolution (e.g., limit required travel). If the request is still denied, management will provide the specific budget reasons for the denial.
- The official duty station (ODS) for remote workers is their alternate worksite.
 - This may result in a change in locality pay (remote outside the commuting area).
- Changes to remote work ODS once established.
 - Must get approval to change ODS and sign new Workplace Flexibilities Agreement (WFA).
 - The employee pays any relocation expenses if the employee voluntarily modifies the WFA for a new remote work location.
- Equipment – All Teleworkers will receive:
 - Laptop with camera;
 - Separate Monitor (if needed to perform the job duties); and
 - Keyboard/mouse.
- Equipment – All Remote Workers and those who Telework at least 50% will receive, if needed and subject to funding:
 - Surge protector;
 - Docking station;
 - Lockable storage;
 - Print/scan/fax capability; and
 - Technology to make/receive calls.
- Accessibility/Use of Virtual Technologies
 - Use of technologies merely indicates availability.
 - Cannot be used as evidence of time worked or failure to work.
- Use of Camera.
 - Advance notice will be given to employees when camera use is required for a meeting.

- Standard for requiring use of the camera: When face-to-face meetings are warranted but impractical and there is a particular need for the employee to be visually seen (e.g., presentation, introductions).
 - Camera use may be for all or part of the meeting.
 - Exceptions may be granted for good cause (e.g., recovering from injury/illness).
 - Employees may blur the background.
- Recordings
- Management may record a virtual meeting if there is a business need (e.g., training), but must notify participants in advance and state whether camera use is optional.
 - Employees may not record.

Article 27 – Awards

- Award Pools Changes.
 - For all FDA (not just HQ), pools will be established at the Centers level, except FDA/OC will establish pools at the office level.
 - Pools will be established by January 15 (was December 31).
 - New budget split for performance and incentive awards: 15-20% reserved for incentive awards, remainder to performance since performance awards are based on the more objective measure of the rating of record; NTEU National and HHS can agree to change this percentage (was a least 15% reserved for incentive awards).
- New requirement that both Outstanding and Achieved More than Expected Results ratings will receive an award.
- New right for employees to request to split an award between cash and time off. Time off cannot exceed 80 hours.
- Time-off awards (TOA) will not impact the cash budget of performance awards.
- The annual TOA cap is increased from 80 to 100 hours, and the cap for a single contribution is increased from 40 to 80 hours. The caps are pro-rated for part-time employees.
- Incentive Award Committee Changes .
 - FDA committees are established at the Centers level, except ORA will have 6 committees at the office level. Each of the six will subdivide into 2 sub-committees to review incentive award nominations.
 - Added a minimum number of committee members - At least 6 committee members (at least 8 for ORA); equally divided between NTEU and management.

- Performance Award Committee Changes.
 - All PMAP committees are established at the OpDiv level (except OS which may be established at the StaffDiv level, and HRSA at the Office level per current practice).

Article 30 – Performance Management Appraisal Program

- Changes to the PMAP.
 - Clarified NTEU’s right to bargain over changes to any aspects of the PMAP that are more than *de minimis*.
 - Clarified that NTEU’s comment rights apply when there is no bargaining obligation (*de minimis* change to a critical element). This is in addition to the employee’s right to participate in the development of their PMAP.
- All performance elements and standards will be SMART – specific, measurable, attainable, relevant, and timely.
- The mandatory documented progress review may be conducted in person or virtually.
- Eliminated the need for employees to sign their progress review when there is a written narrative. It will be emailed to them.
- Added a requirement to discuss any revised PMAP with employees, if they request.
- Added that elements which are “not ratable” will not affect the average score used to determine the summary rating.
- Added a requirement that written explanations for declined performance must state how the performance can be improved.
- Added a 10-day timeframe for employees to submit written comments to proposed ratings of unsatisfactory.
- Added a new right for employees to request reconsideration of a rating within 5 days of receipt. The Employer must respond within 5 days.

Article 35 – Reassignments

- Added language to preserve NTEU’s right to bargain over all involuntary reassignments/reorganizations that are more than *de minimis*.

- Reassignment notices will be sent to the impacted chapter; to NTEU National if more than one chapter is impacted.

Article 36 – Merit Promotion

- Vacancy Announcements.
 - Will be posted on USAJobs, not HHS intranet; except FDA/ORR news will continue to include announcements.
 - Added exception to the rule that vacancy announcements will be open for 10 workdays, to permit closing earlier for jobs that historically have a large volume of applicants (exceeds 100-150), provided the vacancy announcement identifies the applicant limit at which it will close.
 - Added that vacancy announcements must include bargaining unit status.
- Added requirement that HHS must consider all materials submitted with the application.

Article 45 – Grievance Procedure

- Removed matters that were previously excluded from the grievance process.
 - Complaints concerning veteran's preference;
 - Separation of employees in probationary or trial periods;
 - Ratings on individual performance elements or measures (unless grieved as a final rating);
 - Progress reviews and counseling – now allowed to grieve as part of a final action or if violates any provision of the CBA;
 - Orders to divest – now grievable if order was in violation of law and as part of a discipline or adverse action for failure to comply with the order.
- Clarified that grievances may be filed on behalf of a group of BUES (mass grievances).
- New requirement for HHS to identify the *specific defect* if it asserts a grievance is defective so NTEU can cure it, if necessary.
- NTEU may have an equal number of representatives as HHS at step meetings.
- Changes to Grievance Requirements.
 - Identification of employees covered by the grievance, their work organization/location – *if known*;
 - Sufficient detail to identify the basis of the grievance – added example: a statement of how the violation occurred;

- Option to file a grievance with the second level supervisor where the immediate supervisor has a conflict (e.g., harassment/violence in the workplace) or lacks authority to resolve the grievance.
- Grievance meetings require *both parties* to discuss the issues and attempt resolution.
- In local grievances, if practicable, each party will notify the other in advance of its participants.
- Step officials are required to timely resolve grievances.
- Names of the next step official will be included in the grievance step response.
- Information Requests.
 - Removed language that NTEU should try to submit initial requests within 10 days of filing the grievance.
 - HHS must timely respond – mirrors legal obligation.
 - Modified procedure for postponing grievance meetings where HHS has not responded.
- Automatic tolling of timeframes if the parties elect to use ADR process to resolve a grievance.
- Optional grievance form – appendix.

Article 48 – Equal Employment Opportunity/Affirmative Action

- Modified § 1 to remove the last sentence which said “*EEO complaints based on sexual orientation may be pursued through the administrative process within the Department; current law does not permit that basis for discrimination to be pursued outside the employing Federal agency.*”
 - This change was based on the 2020 Supreme Court decision in Bostock v. Clayton County, which held that discrimination on the basis of sexual orientation or gender identity is protected under Title VII of the Civil Rights Act of 1964.

Article 53 – Public Transportation Subsidies

- Public Transit subsidy.
 - Annual increases for inflation will be made within 2 pay periods.
 - Retroactive increases will be implemented normally no later than 6 pay periods.
 - Struck requirement that to be eligible you must use public transit for at least 80% of commuting cost.

- Bicycle Reimbursement Program – This is now a contractual obligation (up to \$20/month for bicycle-related expenses; must commute at least 50% each month by bicycle).
- Pre-Tax Parking – Established a joint labor-management committee to investigate and identify costs and steps needed to establish a program to exclude qualified parking expenses from taxable income.

Article 58 – Labor-Management Relations Committees

(renumbered from Article 65)

- Requires each OpDiv and the OS StaffDivs to establish *and maintain* LRMCs for the duration of the CBA, to the extent not already established.
- If not already established, LRMCs in each OpDiv must be established within 45 days of the effective date of the CBA.
- LRMCs must establish charters and set terms for mandatory meetings at least bi-annually.