

MEMORANDUM OF UNDERSTANDING

On June 6, 2012 and June 7, 2012, NTEU (“Union”) and HHS (the “Agency” collectively the “parties”) commenced an arbitration hearing before Arbitrator Herbert Fishgold concerning NTEU’s November 1, 2011 national institutional grievance (the “grievance”) with respect to the Agency’s failure to process grievances. In its grievance, NTEU alleged that HHS violated Article 45 of the HHS-NTEU Consolidated Collective Bargaining Agreement (the “collective bargaining agreement”) and 5 U.S.C. § 7116(a)(1) and (5) by improperly denying grievances based upon procedural deficiencies and otherwise failing to comply with the collective bargaining agreement and law with respect to grievance processing. During such hearing, the parties agreed to constitute a grievance mediation process to attempt to resolve all grievances which are subject to NTEU’s November 1, 2011 grievance, rather than complete the arbitration hearing at that time. This Agreement shall have no precedential effect whatsoever; it is entered into solely to resolve the November 1, 2011 national institutional grievance.

The parties mutually desire to resolve all disputes arising from, or relating to, NTEU’s November 1, 2011 national institutional grievance. Therefore, the parties agree as follows:

1. Arbitrator Herbert Fishgold (the “Arbitrator”) shall retain jurisdiction over NTEU’s November 1, 2011 national institutional grievance until such time as that grievance is resolved by settlement agreement; withdrawn by NTEU; or, is fully adjudicated by the Arbitrator. NTEU’s November 1, 2011 grievance will be held in abeyance until the conclusion of the grievance mediation process described herein.
2. The Arbitrator shall exercise jurisdiction over the grievance mediation process described herein and shall adjudicate any disputes that arise between the parties concerning the grievance mediation process.
3. Grievances subject to the grievance mediation process shall include: all national and local grievances filed by NTEU on or after October 2, 2011; all national and local grievances filed prior to October 2, 2011 wherein the Agency denied or failed to issue a response that would have been due on or after October 2, 2011; and, all national and local grievances filed on or after October 2, 2011 protesting a procedural denial of a prior grievance, (“seriatim grievances”), filed before October 2, 2011 wherein the Agency denied or failed to issue a response that would have been due on or after October 2, 2011. Each such grievance shall concern one (1) of the following:
 - a) An assertion that the grievance failed to provide sufficient facts and/or “all known and alleged facts”;
 - b) An assertion that the grievance is invalid based on timeliness;
 - c) The Agency’s failure to meet with NTEU or provide the next step deciding official to whom the grievance may be appealed; or,
 - d) The Agency’s failure to comply with the grievance response time frames.

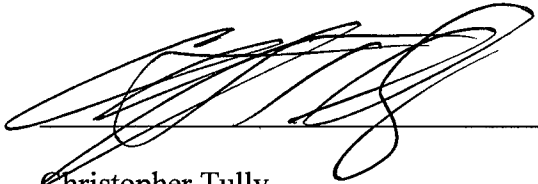
4. The Agency shall respond to all currently outstanding timely filed information requests submitted attendant to any grievance set forth in paragraph 3, above, prior to holding any grievance meeting as set forth in paragraph 6(d), below.
5. Local grievances shall be processed as follows:
 - a) Within forty-five (45) calendar days of the effective date of this Agreement, each local NTEU Chapter President will provide Kenneth Brown via e-mail at Ken.Brown@hhs.gov with the "local list" of grievances, compiled pursuant to paragraph 3, above, which were denied and/or not processed by the Agency. The "local list" shall include: the date of the grievance; the name of the grievant; the name of the Agency official with whom the grievance was filed; a brief statement of the alleged violation of the collective bargaining agreement and law; and, the date of the Agency's alleged inappropriate response.
 - b) Within twenty (20) calendar days of the Agency's receipt of the "local list," the Agency will provide each local NTEU Chapter President with the contact information for the deciding official for each grievance set forth on the "local list" within the jurisdiction of the Chapter.
 - c) Within twenty (20) calendar days of each local NTEU Chapter President's receipt of the deciding officials' contact information, the local parties will schedule a telephonic meeting to schedule grievance meeting(s).
 - d) Within twenty (20) calendar days of such telephonic meeting, the local parties will conduct one (1) face-to-face grievance meeting for all of the grievances set forth on the "local list." The parties shall have the right to appoint their respective representatives to attend such meeting.
 - e) The Agency will ensure that the deciding official for each of the grievance meetings, held pursuant to this Agreement, has the authority to resolve grievances on the "local list."
 - f) Based upon the information obtained during the grievance meeting and the existing grievance file, the local Agency official will:
 1. Grant the relief requested in accordance with the collective bargaining agreement;
 2. Deny the grievance on the merits, and issue a decision addressing the merits of the grievance; or,
 3. Deny the grievance on procedural grounds.

- g) Within thirty (30) calendar days of the grievance meeting, the Agency will provide each local NTEU Chapter President with a written decision on the merits and/or the procedural validity with regard to each grievance set forth on each chapter's "local list." In the event the Agency continues to assert that a grievance does not meet the procedural requirements of the collective bargaining agreement, such grievance shall be added to a national "Master List" of grievances. The "Master List" will include all local and national grievances to which the Agency continues to assert a defense of procedural deficiency.
 - h) In the event the Agency denies a grievance based on the merits, each local Chapter may invoke arbitration within thirty (30) calendar days of the final decision in accordance with Article 46, Section 1(A) of the collective bargaining agreement.
6. Any national grievance not processed by the Agency for one of the reasons set forth in paragraph 3(a)-(d), above, not pending before any other arbitrator, shall be processed in accordance with the local grievance procedure set forth in paragraph 5(a) – (h), above:
 7. Prior to the conclusion of the grievance mediation process, NTEU may submit grievances to the Arbitrator that do not fall within the province of paragraph 3, above, including those grievances that were filed before October 2, 2011. NTEU will provide the Agency with a list of all such grievances prior to providing the list to the Arbitrator. The Arbitrator shall seek written submissions from each party that sets forth the parties' respective positions with respect to each such grievance. The Arbitrator will consider whether good cause is shown with regard to each respective grievance on a case-by-case basis. In the event the Arbitrator elects to adjudicate any such grievance, such grievance shall be placed on the "Master List" and adjudicated accordingly.
 8. NTEU and the Agency may meet to resolve disputes arising during the above-described mediation process and disputes concerning the implementation of this Agreement. Either party may invoke the services of the Arbitrator to resolve any dispute arising under this Agreement and the Arbitrator will seek to schedule a meeting between the parties, generally within seven (7) calendar days, or as soon as practicable.
 9. All grievances on the "Master List" shall be referred to the Arbitrator. Thereafter, the Arbitrator shall seek written submissions from each party that briefly sets forth the parties' respective positions with respect to each unresolved grievance. The Arbitrator shall attempt to resolve all grievances on the written record, however, he may convene a hearing to adduce further evidence at his discretion. Any such hearing shall be expedited in nature. Within thirty (30) calendar days of the hearing, the Arbitrator shall issue a decision with respect to each alleged procedural deficiency for each grievance on the "Master List." In the event that the Arbitrator determines that any such grievance complies with Article 45, Section 6 of the collective bargaining agreement, the Arbitrator

shall schedule a further expedited hearing wherein he will adjudicate the merits of each such grievance. Thereafter, the Arbitrator shall issue a consolidated opinion and award resolving all such grievances submitted for resolution to which either party may file exceptions.

10. All time frames set forth herein may be extended by mutual agreement of the parties.

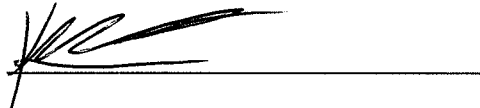
For the Agency:



Christopher Tully
Attorney
Department of Health and Human Services

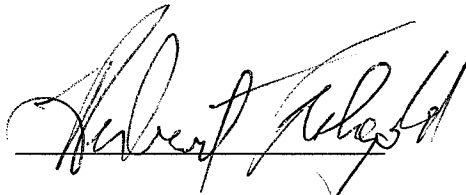
6/15/12
Date

For the Union:



Keisha E. Williams
Negotiations Legal Specialist
National Treasury Employees Union

6/15/12
Date



Arbitrator Herbert Fishgold

June 15, 2012
Date