

The Expedited Arbitration Process

Welcome to LR Chronicles number 19. In this edition I will explain the process that this Region will follow regarding Expedited Arbitrations. There have been some issues recently regarding the filing of grievances, expedited or not, and how these issues are related to the Arbitration process. (Please refer to LR Chronicles numbers 10 through and including 16) As a result of these issues, NATCA National and the NEB have decided to change some of the language that is used in our grievances. These changes apply to ALL grievances, regardless of what level at which the grievance is filed: local, regional or national. For this edition of the LR Chronicles, however, I am only going to cover “**expedited arbitration grievances.**”

Ever since the imposition of the imposed conditions of employment, the guidance has been to not, in any way, shape or form, recognize those work and pay rules; we only operate under the only ratified collective bargaining agreement (green book). Due to some issues that have arisen in some recent arbitration cases and the FLRA General Counsel's decision to dismiss our appeals and requests for reconsideration, it has been determined by NATCA National and the NEB that we need to change the way we proceed with grievances. To that end, the NATCA National office and the NEB sent out guidance as to why **(Enclosure 1)** we need to make this change. Additionally, the NATCA National office has placed the agency on notice **(Enclosure 2)** that while we still do not recognize the imposition of the white book, we will, under protest, file grievances with a reference to that imposed document. That being said, it **MUST** be understood that even though we are "referring" to Article 9 of the ICE (white book), this does not mean that we are grieving the white book and/or anything contained within the white book. This is strictly an effort to attempt to deal with the threshold issues that have been raised at arbitration. Our grievances are still based on violations of the **ONLY** collective bargaining agreement that we have...the green book.

Should any representative (FACREP or designee) at any facility within NWP, have a member that is the subject of a disciplinary/adverse action, or has otherwise suffered a loss of pay, leave or benefits, the following process shall be followed:

Step 1: The FACREP or their designee shall contact the LR Advocate assigned to their facility and discuss, with them, the circumstances surrounding the action taken by the agency.

NOTE: Please do not file a grievance, at this point, on this issue. If an employee or Union grievance is filed, this takes away the ability of the national office to proceed through the expedited arbitration process.

Step 2: The LR Advocate and/or the FACREP will then contact the NWP LR Lead and discuss the circumstances surrounding the action. If necessary, the discussion will involve the NWP national office LR Staff representative. Particularly, the LR Staff representative may need to be involved to ensure that the issue is ripe for this process or if it would be better to pursue in a different forum.

Step 3: After the decision is made on how best to pursue the action, the LR Advocate will contact the representative to let them know the final decision:

- If the decision is to file expedited arbitration, the representative will go to the next step;
- If the decision is other than to file expedited arbitration, the representative is free to contact the NWP LR Lead or the RVP for further discussion.

Step 4: The attached form entitled “**Employee Grievance (Request for Expedited Arbitration)—protest**” shall be completed by the employee, with assistance from the representative. While the representative may assist the employee in correctly filling out the form, **only** the employee may sign the form. This is the **only** form that may be used to request expedited arbitration.

NOTE: Attached to this LR Chronicles is the form to be used for expedited arbitrations (**Enclosure 3**). This form is also on the GATS under the “docs” tab. Additionally, I am enclosing a sample expedited arbitration request (**Enclosure 4**) that is filled out correctly and that you should use as a guide to assist the employee with filling out the form.

Step 5: Once the expedited arbitration request form is completely and correctly filled out and signed by the employee, the representative shall hand deliver a copy to the agency's "deciding official." This is the agency's representative who signed the decision letter. If that individual is not available, then the representative shall hand it to any management official. Regardless of who receives the form, the representative shall ask that person to sign and date for receipt of the form. If they refuse, the representative shall note the refusal on the form, as well as note the date and time of the refusal.

Step 6: The representative shall scan the form **and** the decision letter and email it to the NWP LR Lead and the NWP RVP. We will, in turn send it immediately to the NATCA National Office. For those facilities that do not have a scanner, please contact the NWP LR Lead for alternate methods of sending the documentation.

Step 7: Upon receipt, the NATCA National Office will submit the completed grievance form, the decision letter as well as a cover letter requesting expedited arbitration, to the FAA at the national level. The National Office shall then email the completed request back to the NWP RVP and the NWP LR Lead, who will, in turn, forward that email to the FACREP.

NOTE: Under both the green book and the white book, we have **twenty (20) calendar days** in which to notify the **FAA at the national level** that we are requesting expedited arbitration. To ensure a timely-filed grievance, the 20 days begins with the date on the decision letter. This 20 days includes all 7 steps above. Please keep this in mind when acting upon any agency action resulting in the loss of pay, leave or benefits by any employee. As you can see, there is much coordination to accomplish, from start to finish, and not a lot of time to do it.

Finally, the FACREP, or their designee is responsible for creating a package containing all correspondence related to the expedited grievance. This includes ROCs (Record of Conversation), Weingarten notes, ROIs (Report of Investigation), proposal letters and/or any other supporting documentation that needs to be part of the grievance package. (Please refer to LR Chronicles numbers 8 and 9) All of this information must be scanned into a PDF and emailed to mhull@natca.net and to ksills@natcadc.org. For those facilities that do not have a scanner, please contact the NWP LR Lead for alternate methods of sending the documentation.

Since the GATS is still not ready to handle expedited arbitrations, there is no action required via the GATS. When the GATS is ready to handle expedited grievances we will let you know.

Thank you very much and if there are any questions, please feel free to contact me.

Mike Hull
NWP LR Lead

The Union is beginning another chapter in its fight against the work rules and pay system imposed upon the members of the National Air Traffic Controllers Association. Our efforts to fight this illegal unilateral imposition have now taken us to the U.S. District Court for the District of Columbia. On March 21, 2008, NATCA filed a complaint that will hopefully provide a final legal conclusion to the legality of the FAA's actions. At the heart of the complaint is the refusal of the Federal Service Impasses Panel (FSIP) to assist the FAA and NATCA in resolving the impasse over the successor to the 2003 Collective Bargaining Agreement. The complaint was filed because, as of February 26, 2008, the Union's efforts to have the Federal Labor Relations Authority (FLRA) issue a complaint on several unfair labor practice charges were denied at each step of the Authority's appeal process.¹ The complaint filed in March of 2008 does not constitute a direct appeal of the FLRA's refusal to pursue any of the unfair labor practice charges related to the bad faith bargaining during the negotiations sessions or, ultimately, the unilateral implementation of the imposed work and pay rules. A resolution to our contractual dispute will, however, come if the FSIP is required to assert jurisdiction over the Parties' impasse. It is within the scope of the Panel's authority to resolve our dispute and provide the Parties with a clear understanding of the applicable collective bargaining agreement.

The Parties' dispute over the legitimacy of the 2003 Collective Bargaining Agreement (CBA) instead of the work and pay rules imposed in September of 2006 has had a great deal of impact on every member of the bargaining unit and the Union as a whole. In September of 2006, after a great deal

¹ WA-CA-06-0358: Charge alleging that the FAA engaged in bad faith bargaining by making a regressive proposal over developmental pay stages; WA-CA-06-0363: Charge alleging that the FAA engaged in bad faith bargaining by making a regressive proposal over Controller-In-Charge pay; WA-CA-06-0366: Charge alleging that the FAA insisted to impasse on permissive subjects of bargaining and that the FAA engaged in a pattern of bad faith bargaining throughout negotiations; WA-CA-0563: Charge alleging that the FLRA refused to bargain under the auspices of the Federal Service Impasses Panel; WA-CA-06-0648: Charge alleging that the FAA's unilateral implementation of what it deemed to be its final contract proposal was a violation of the duty to bargain; WA-CA-06-0716: Charge alleging that the FAA engaged in bad faith bargaining by making a regressive proposal over the duration clause.

of deliberation, NATCA came to the conclusion that the Agency's actions would not be tolerated. In addition to filing various unfair labor practice charges and grievances, the Union made a decision to refuse to accept the imposed work and pay rules. The only terms and conditions of employment that had been presented to the membership (and ratified by the membership) were contained in the 2003 CBA. While the Agency may have written the word "contract" on the white book, a successor contract did not exist. The Union's position was, and continues to be, that a contract only exists when the two Parties come to a mutually agreed-upon set of rules and those rules are ratified by NATCA's membership. Thus, for the past twenty months, the Union has fought against the white book. Our members have filed countless grievances contesting any deviations from the terms that exist under the 2003 CBA. While it may have been tempting to grieve the Agency's failure to even comply with its own imposed work and pay rules, those grievances have been couched as violations of the 2003 CBA; the white book has no validity and, thus, does not have any weight for a grievance.

Each of you have seen the Agency's reaction to the Union's show of solidarity in defiance of the imposed work and pay rules. You have all seen grievances denied because of our reliance on the 2003 CBA. You have all had to argue with managers that rights have inured to the benefit of your members as a result of the Statute and the 2003 CBA and the words of the white book do nothing to undermine those rights. The Agency's responses have been varied. The common theme in those responses has been the desire to deny you and your membership of that to which you are entitled. The Union has fought each one of these denials.

For a period, the Parties were able to mutually agree to hold those contractual disputes that were directly related to the larger contract dispute in abeyance; such contractual disagreements would be resolved through the FLRA and the courts. Those issues that were not bound by the larger dispute continued to proceed to arbitration. Unfortunately, the

Agency undertook a series of delaying tactics related to arbitrations. Some regions refused to hear any case until every previously-filed arbitration was conducted. Others refused to schedule in good faith or defied scheduling attempts because of the Union's refusal to acquiesce to the imposed work and pay rules. To resolve this issue, the Union was able to push the Agency into going forward with cases with a stipulation---the issues put before the arbitrator did not involve the contract dispute, and thus, only required his or her attention to the merits. At times, the Agency balked in the scheduling of cases, but in some cases they ultimately agreed to go forward. Thus, the Union has still been able to process grievances for employees facing discipline and adverse actions.

The Agency's good faith ceased after February 26, 2008. The Agency has taken the position that, when the FLRA's General Counsel denied our final requests for reconsideration, the dispute over the validity of its 2006 imposed work rules was over. The Agency has claimed the FLRA's abdication of its responsibilities (and its blatant partisanship) as a final victory over NATCA. Thus, the Agency has taken two approaches to the processing of grievances. They have either refused to schedule a case that cites the 2003 CBA or it raises a threshold issue before the arbitrator. Where the Agency raises a threshold issue, they argue that the Arbitrator does not have jurisdiction to hear the merits of the case. Essentially, the Agency believes that the 2006 imposed work rules is the only vehicle that may grant the Parties an audience with the arbitrator. Because the Union has not recognized the 2006 imposed work rules in the grievance, the Agency believes the issue is not properly before the arbitrator.

Recently, the Union received a ruling on the procedural question from one arbitrator. Arbitrator Joshua Javits found the Union's reliance on the 2003 CBA did not have an impact upon his ability to proceed to the merits of the case. In his opinion, the Union's reliance on the 2003 CBA did not prejudice the Agency. He recognized the contentious circumstances surrounding the September 3, 2006 imposed work rules and the

Union's efforts to refute the legitimacy of that document. The Agency was on notice regarding the nature of the Union's grievance; the reliance on the 2003 CBA would not be a reason to circumvent the recognized dispute resolution process. While Arbitrator Javits allowed the merits of the grievance to be heard, he opined that the review of the merits would include reliance upon the 2006 imposed work rules because the FLRA's processes had come to a conclusion.

The confluence of the February 26, 2008 denial of the Union's requests for reconsideration, the March 21, 2008 complaint, and the decision by Arbitrator Javits required NATCA to review the strategy related to the administration of grievances. While our course of action will be altered, one fact remains true: The Union has not recognized the legitimacy of the 2006 imposed work rules. In addition to our efforts to get the FSIP to assert jurisdiction and resolve the 2006 impasse, the Union continues to wage an increasingly hopeful battle in Congress. The efforts of the Union's activists and lobbyists have pushed the contract impasse to the front and center of Congressional debate. Both the Senate and the House are considering legislation that will provide relief to our members.

The reality of the situation requires us to adjust our strategy as the Congress and the U.S. District Court for the District of Columbia consider our situation. In his decision, Arbitrator Javits indicated that it would be preferable if the Union file grievances under both the 2003 CBA and the 2006 imposed work rules while noting its position that the 2006 imposed work rules were impermissibly implemented by the Agency. We have chosen to take this guidance to heart. When given the choice between facing a battle over our ability to pursue a grievance for our members or filing under two documents, while registering our dissent, the Union believes it must take whatever action is necessary to facilitate the processing of grievances. It must be clear that we are **not** following the white book. It is our expectation that every representative of the Union—local facility representatives, Regional Vice Presidents, and National Office staff—will process all grievances through

this mechanism of protest. We are merely using new templates, which will be placed on GATS, to process grievances. Our contractual dispute remains.

Signed

NEB

Click [here](#) to download the May 12, 2008-Ltr to Herlihy Re Processing of
Grievances

Employee Grievance
(Request for Expedited Arbitration) --protest

Enclosure 3

Grievance:

Facility:

Name of Grievant:

Charging Party:

Point of contact:

Date of Violation:

Date of Grievance:

Name and Title of Person Grievance is filed against:

Deciding Official

List of Contract Violations/ Relevant Orders and Statutes:

The Agency's actions constitute a violation of, including but not limited to Article 10, (Additional Contract Violations) of the 2003 collective bargaining agreement between NATCA and the FAA and 5 USC Chapter 71. This grievance is filed pursuant to Article 9 Section 1 of the 2003 collective bargaining agreement and 5 USC 7103 (a) (9). In addition, this grievance is being filed, under duress and protest, in accordance with Articles 9 and 10 of the 2006 imposed work rules.

Issue:

Whether the Discipline/Adverse Action imposed upon Controller fails to promote the efficiency of the Agency and violates the Parties' Collective Bargaining Agreement, law, rule and regulation?

Facts/ Nature of Grievance:

On Date the FAA imposed Discipline/Adverse Action upon Controller. The Discipline/Adverse Action cited the following reasons and specifications:

Corrective Action Sought:

- ***Rescind the Discipline/ Adverse Action;***
- ***Correct Controller's Official Personnel File to reflect the rescinded Discipline/Adverse Action;***
- ***Provide Controller with all applicable back pay with interest;***
- ***Reinstate any leave or differentials denied due to Discipline/Adverse Action; and***
- ***make Controller whole in every way and any other remedy deemed appropriate***

The National Air Traffic Controllers Association, AFL-CIO ("NATCA") and the Federal Aviation Administration ("FAA") have, since at the impasse over the multi-unit bargaining in 2003, been parties to an ongoing legal dispute regarding the applicable legal procedures and requirements for negotiation of collective bargaining agreements and for resolving impasses in such negotiations – whether such impasses remain under the jurisdiction of the Federal Service Impasses Panel ("FSIP"). See, e.g., Nat'l Air Traffic Controllers Ass'n. v. Federal Service Impasses Panel, et al., 437 F.3d 1256 (D.C. Cir. 2006). This fundamental issue of law has never been resolved by the Federal Labor Relations Authority or by the Courts.

Most recently, on March 21, 2008, NATCA filed suit in the U.S. District Court for the District of Columbia seeking a final legal resolution of the question. National Air Traffic Controllers Association, AFL-CIO v. Federal Labor Relations Authority, et al., Civil Action No. 1:08-cv-00481 (U.S.D.C. D.C.)

The FAA has recently advised the Union that hereafter it will insist that any and all grievances be processed pursuant to the

Employee Grievance
(Request for Expedited Arbitration) --protest

Enclosure 3

terms and conditions that it believes are in effect, the validity of which NATCA has disputed and will continue to dispute until the underlying legal issue is finally resolved, and that the Agency will refuse to process grievances under the neutral process the parties had previously utilized as an interim measure until the legal issue was ultimately resolved. It is the Union's view that the FAA's change of position is improper and unlawful.

Nevertheless, to protect bargaining unit employees during the pendency of the litigation, NATCA has determined to follow the procedures that the FAA claims to be applicable, but the Union does so on three conditions: first, that it does so under duress and under protest; second, that it takes this position temporarily and without prejudice to its longstanding legal position that the FAA has improperly imposed these terms and conditions of employment in violation of the existing laws and procedures, in particular that the FAA has bypassed the impasse-resolution procedures of the FSIP; and, third, that the Union's position will remain in effect only until a final decision can be obtained from the Courts.

Signature

Employee Grievance
(Request for Expedited Arbitration)

Enclosure 4

Grievance: (Blank; the FAA will get NATCA national a grievance number)

Facility: (XXX)

Name of Grievant: (Name of Employee)

Charging Party: (Name of Employee)

Point of contact: (FACREP or FACREP Designee)

Date of Violation: (Date of Decision Letter)

Date of Grievance: (Self-Explanatory)

Name and Title of Person Grievance is filed against:
Deciding Official (Whoever signed the Decision Letter)

List of Contract Violations/ Relevant Orders and Statutes:
The Agency's actions constitute a violation of, including but not limited to Article 10, (Additional Contract Violations) (if necessary), of the 2003 collective bargaining agreement between NATCA and the FAA and 5 USC Chapter 71. This grievance is filed pursuant to Article 9 Section 1 of the 2003 collective bargaining agreement and 5 USC 7103 (a) (9). In addition, this grievance is being filed, under duress and protest, in accordance with Articles 9 and 10 of the 2006 imposed work rules.

Issue:

Whether the Discipline/Adverse Action (5 day suspension) imposed upon Controller (Name of employee) fails to promote the efficiency of the Agency and violates the Parties' Collective Bargaining Agreement, law, rule and regulation?

Facts/ Nature of Grievance:

On Date (Date of Decision Letter) **the FAA imposed Discipline/Adverse Action (5 day suspension) upon Controller (Name of Employee) The Discipline/Adverse Action (5 day suspension) cited the following reasons and specifications:** (List all reasons and specifications as per the proposal letter and/or the decision letter)

Corrective Action Sought:

- **Rescind the Discipline/ Adverse Action; (5 day suspension)**
- **Correct Controller's (Name of Employee) Official Personnel File to reflect the rescinded Discipline/Adverse Action; (5 day suspension)**
- **Provide Controller (Name of Employee) with all applicable back pay with interest;**
- **Reinstate any leave or differentials denied due to Discipline/Adverse Action; (5 day suspension) and**
- **make Controller (Name of Employee) whole in every way and any other remedy deemed appropriate**

The National Air Traffic Controllers Association, AFL-CIO ("NATCA") and the Federal Aviation Administration ("FAA") have, since at the impasse over the multi-unit bargaining in 2003, been parties to an ongoing legal dispute regarding the applicable legal procedures and requirements for negotiation of collective bargaining agreements and for resolving impasses in such negotiations – whether such impasses remain under the jurisdiction of the Federal Service Impasses Panel ("FSIP"). See, e.g., Nat'l Air Traffic Controllers Ass'n. v. Federal Service Impasses Panel, et al., 437 F.3d 1256 (D.C. Cir. 2006). This fundamental issue of law has never been resolved by the Federal Labor Relations Authority or by the Courts.

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Employee Grievance
(Request for Expedited Arbitration)

Enclosure 4

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The FAA has recently advised the Union that hereafter it will insist that any and all grievances be processed pursuant to the terms and conditions that it believes are in effect, the validity of which NATCA has disputed and will continue to dispute until the underlying legal issue is finally resolved, and that the Agency will refuse to process grievances under the neutral process the parties had previously utilized as an interim measure until the legal issue was ultimately resolved. It is the Union's view that the FAA's change of position is improper and unlawful.

Nevertheless, to protect bargaining unit employees during the pendency of the litigation, NATCA has determined to follow the procedures that the FAA claims to be applicable, but the Union does so on three conditions: first, that it does so under duress and under protest; second, that it takes this position temporarily and without prejudice to its longstanding legal position that the FAA has improperly imposed these terms and conditions of employment in violation of the existing laws and procedures, in particular that the FAA has bypassed the impasse-resolution procedures of the FSIP; and, third, that the Union's position will remain in effect only until a final decision can be obtained from the Courts.

(Signed by employee ONLY)

Signature