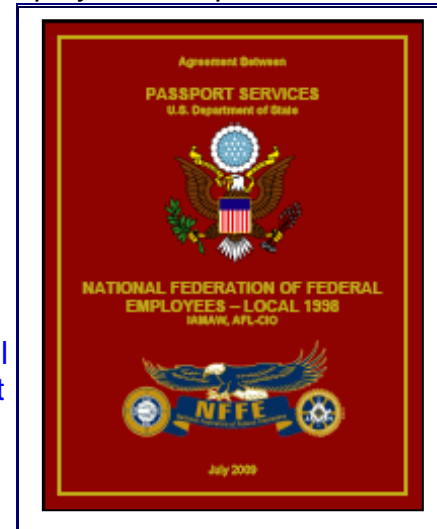


Contract Issues - Chapter 7

This chapter contains a brief discussion of some of the parts of the Master Agreement (aka “contract”) that you should be especially aware of. However, as a Union Steward, it is important for you to read the **ENTIRE** contract. Article 8, Sections 7a and 7b require that Management distributed the Contract to all employees and post it on the Passport Services intranet.

- a. Booklet copies of this Master Agreement shall be furnished by Management to all Management officials, bargaining unit employees on duty as of the date of the Master Agreement, and to all bargaining unit employees entering on duty after the date of this Master Agreement. One-hundred (100) additional copies of this Master Agreement will be furnished to the Union for its use. The cost of printing this Master Agreement shall be borne by the Employer.
- b. The Master Agreement will also be made available electronically via the Passport Services Intranet within 30 days of its approval. The Master Agreement will be sent electronically to the Union President within 3 days of its approval in both PDF and Word Document formats.



This chapter covers the following topics:

- Important points on obtaining guidance on Contract interpretation
- Master Agreement "aka's"
- Highlights of selected changes in, and important aspects of, the following issues:
 - Negotiated Grievance Procedure and related issues (Articles 20, 21, 22, 23, and 24)
 - Negotiations/Change in Working Conditions (Article 12)
 - The Integrity of the Passport Issuance Process
 - Promotions (Article 15)
 - Evaluations/Appraisals (Article 18)
 - Work Schedules (Articles 25, 26, and 27)
 - Employee Rights (Article 6)
 - Upward Mobility (Article 16)
 - Union/Management Cooperation (Article 4)
 - Management Rights (Article 5)
 - Definitions & Index (Article 3 and Index)

IMPORTANT POINT: Obtaining Guidance on Contract Interpretation

"The plain meaning of the words" – an arbitrator normally only gives weight to testimony on the meaning of a Contract provision, or receives evidences such as notes from the actual negotiators at the table, if there is an actual question about the meaning of the words. If the plain meaning of the words is readily apparent, then no interpretation is necessary. Of course, experience teaches that what may seem completely clear and uncontroversial at the bargaining table to the negotiators may not be so easily interpreted and understood by those who must administer and use the Contract after it goes into effect. There will arise situations where a Union Steward needs guidance on how to interpret the Contract.

Keep the following in mind when you have a question about the meaning of the Contract.

- **Obtain guidance only from the Union leadership - do not seek guidance from Management on how to interpret the Contract.** Employees are often used to seeking guidance on work procedures from their supervisors. However, when you are serving as a Union representative, you are wearing your "union hat" and not your "employee hat".
- Managers and supervisors do not have the final say on the meaning, application, or interpretation of the Contract (as far as we are concerned).
- If you have a question about what a provision of the Contract means, contact the Local 1998 leadership (President, Vice President, Secretary-Treasurer, Recording Secretary, and/or Chief Steward).
- The Contract itself supports the notion that the Union interprets the Contract on behalf of employees – see Article 3:

STEWARD (UNION OR SHOP STEWARD): An appointed or elected Union representative who performs Union representational and *contract interpretation functions* on behalf of bargaining unit employees. Stewards are fellow bargaining unit employees who are trained by the Union to carry out these duties. *<emphasis added>*

You may also obtain guidance on how to interpret the Contract from the following sources:

- The NFFE Local 1998 website: <http://nffe1998.org/>
- This Steward Manual (available on the website)



Special edition of the newsletter focusing solely on the 2009 CBA.

- The August 2009 Special Edition of NFFE Local 1998's newsletter, ***Once Voice, Union Strong*** (available on the nffe1998 website). That edition focused exclusively on explaining what changed from the 7-3-2001 Contract to the 7-20-2009 Contract (as revised on 8-25-2009), so it is helpful to review this edition of the newsletter.
- The notes of the Contract negotiators (contact the Union President).

Master Agreement "aka's"

Remember, the Master Agreement goes by many names:

- "Collective Bargaining Agreement",
- "CBA",
- "Negotiated Agreement",
- "Agreement",
- "Term Agreement",
- "Union Contract",
- "Union Agreement", and
- "Union book".

Don't get confused! All of those terms are valid.

Highlighted changes

What follows are highlights of some important changes to the Contract. This is not a definitive list and the fact that some changes are not listed here should not be interpreted as an indication of significance.

Grievance Procedure

This is one of the most important articles in the Contract, and Chapter 9 of this Steward Manual has more in depth information on this topic. The negotiated grievance procedure is found in Article 20 of the Contract, but also involves Article 21 "Alternate Dispute Resolution" and Article 22 "Arbitration," so you should be familiar with all three articles. Also, it is important to be familiar with the "Stay of Action" provisions in Article 23 "Actions Based on Unacceptable Performance" and Article 24 "Disciplinary and Adverse Actions."

Major changes:

- Number of steps, and names of the steps: The old CBA had four steps in the grievance process, which was confusing because the first step was the “Informal” step, the second step was the “First” step, etc. The new procedure only has two steps, and they are logically titled “Step 1” and “Step 2”.
- Where the grievances are filed: All Step 1 Grievances are filed with the senior manager in the office (e.g., Regional Director at most Passport Agencies), while all Step 2 Grievances are filed with the Director of the Passport Services Office of Field Operations (PPT/FO). The grievance response may be assigned to a subordinate manager.

QUESTION: Why only two steps? Why skip the other supervisors and managers and file directly with the RD?

EXPLANATION: During the eight years under the old CBA (July 2001 – July 2009), the Union found that grievants were essentially getting two real chances at getting their requested relief granted – once at the local office level, and once at HQ. While employees would file two or three steps at the local office level, and either one or two steps at the HQ level, in truth the responses to the grievances were often discussed and decided with each organizational level – and filing additional papers at that level rarely did anything to change anyone’s mind. The additional filings only created unnecessary work for the Union and Management, unnecessary delays for the grievant, and created additional chances for the Union to miss a deadline (and thereby lose the grievance).

- Deadlines changed: The deadline for the Step 1 is now 45 days (up from 30 in the old Contract). The deadline for the Step 2 is 30 days.
- More meetings: The Union found that face-to-face meetings were a helpful avenue towards resolving disputes. The increase in the initial deadline from 30 days in the old Contract to 45 days in the new Contract is partly intended to allow for more informal resolutions to complaints. Also, the grievance procedure calls for grievance meetings and increased use of Alternate Dispute Resolution (ADR) to resolve grievances after they are filed.
- Deadline extensions: Deadlines are counted in calendar days, which is the same as in the old Contract, but there are a number of changes relating to deadlines and extensions of deadlines:
 - When a deadline falls on a weekend or federal holiday, the deadline is extended to the next work day.
 - Also, there are automatic extensions for deadlines that fall during the weeks of Thanksgiving and Christmas.
 - Grievance meetings extend Management’s response deadline by 15 days.
 - ADR sessions extend the next filing deadline until the ADR is completed.
- Missed response deadline penalty: If Management misses a deadline to respond to a grievance, and the matter eventually proceeds to arbitration, then

(with some exceptions) Management would be held responsible for the travel expenses of the arbitrator (even if the Union loses the case).

- Skipping the Step 1 Grievance: There are a number of situations where a grievance cannot be filed at the Step 1 level. In those situations, only a Step 2/Final Step Grievance can be filed. They are listed in Article 20, Section 6:
 - a. Disciplinary And Adverse Actions: Any action taken under Article 24, except that a Letter of Reprimand or lesser action will still be grieved at Step 1.
 - b. Unacceptable Performance: Any action taken under Article 23.
 - c. Nationwide Issues: In the case of matters affecting more than one office, the Union may file a Step 2/Final Step Grievance.
 - d. Training Agreements: A charge to the employee of any training cancellation fees.
 - e. Leave Forfeiture: The denial of the restoration of forfeited annual leave.

QUESTION: Why skip the first step? Why not have multiple steps for these issues too?

EXPLANATION: Under the old Contract, nationwide issues (“c” above) were subject to a one-step “Grievance Between the Parties,” so the new Contract keeps that policy unchanged but just gives it a new title (“Step 2/Final Step Grievance”). The issues covered in “a”, “b”, and “d” could be grieved through the step process in the old Contract but that had no meaning, as the deciding official for the initial step was either an official outside of Passport Services (e.g., the Executive Director of CA/EX) or was one of the most senior managers in Passport Services. So, any additional steps were never overturned. Also, employees who face the situations covered by “a” and “b” already receive a notification of proposed action and can respond to that prior to any grievance being filed over a final decision. The leave forfeiture situation (“e”) under the old Contract went straight to arbitration, and the parties to the July 2009 Contract agreed that made no sense – The Union should be able to file a grievance and Management should be able to respond to the grievance prior to an arbitrator getting involved in a dispute between the parties.

Watch out for:

- ***Deadlines!*** The deadline to file an initial grievance (a “Step 1 Grievance”) is 45 days after the violation happened, or 45 days after the employee was reasonably aware of the violation. Do not miss any deadlines, or else the grievance may be terminated and the Union and the grievant have no other recourse. Also, make sure your members are educated to know about the deadlines so that they do not bring a concern to your attention after it is too late.
- ***Skipping the Step 1 Grievance!*** Remember that certain situations do not have a Step 1 Grievance. Those issues can only be grieved at the Step 2/Final Step level – and there is a ***30-day deadline*** to file.

- Pick one procedure only: You cannot file a ULP or go to the EEO or MSPB on a matter for which you have filed a grievance. See Chapter 10 for more information on ULP's and Chapter 11 for more information on other actions, such as the EEO and MSPB procedures.
- Other administrative procedures allowed by the Contract: Before you contest the rating on an evaluation or a proposal to administer disciplinary action, for example, there are other appeal procedures available in the Contract. If those procedures are not successful, then you may choose to file a grievance.

Remember:

- Get help if you need it. Contact the Local 1998 President or other designated NFFE Local 1998 resource for assistance early in the process.

Negotiations

This important topic is covered in greater detail by Chapter 13 of this Steward Manual. Please make sure to read Article 12 of the Contract.

Major changes:

- The Contract spells out that if there is a conflict between the Master Agreement and the FAM, the provisions of the Master Agreement trump the FAM. This was always true, but not always understood. See Article 12, Section 3.
- The new Article 12 provides a step-by-step description of each part of the notification and bargaining process. This should help avoid misunderstandings and unnecessary disputes over process issues.
- Article 12 lists in greater detail what issues can be negotiated at the local level and what issues can be negotiated at the national level (Article 12, Sections 16 and 17).
- Negotiability appeals and declarations of a bargaining impasse can only be made at the national level (Article 12, Sections 14 and 15).
- Local Management seeks guidance on issues from HQ, so you should feel comfortable seeking advice from the Local 1998 leadership. The Union and Management recognize that the parties at the local office level will seek guidance from their national level officials (see Article 12, Section 16g).

Watch out for:

- **Deadlines! The deadline to invoke the Union's right to bargain is between 15 and 30 days after the Union received notification.** If the notification contained no deadline, then it is automatically 30 days. If the notification contained a deadline, that deadline must be a minimum of 15 days from the date of the notice. Also, note that there are deadlines to make specific proposals and

to request information. Do not miss any deadlines, or else Management may be able to implement a proposed change and the Union may have no other recourse.

- Any bargaining that takes place or any negotiated agreements that result must have a minimum of two (2) Union representatives involved in order to be valid under the Contract.
- Local Management seeks guidance on issues from HQ, so you should feel comfortable seeking advice from the Local 1998 leadership. The Union and Management recognize that the parties at the local office level will seek guidance from their national level officials (see Article 12, Section 16g).

Remember:

- Get help if you need it. Contact the Local 1998 President or other designated NFFE Local 1998 resource for assistance early in the process.

The Integrity of the Passport Issuance Process

This was the NUMBER ONE issue that bargaining unit employees wanted the Union to address in the 2005-2009 Contract negotiations. There is a special webpage on the NFFE Local 1998 website dedicated to this subject.

The Union made a number of proposals intended to enhance the integrity of the passport issuance process, and a significant portion of those proposals were adopted for inclusion into the Contract, including:

- Article 4: Fraud prevention tools, training, and resources included as a standard topics at the annual National Union/Management Committee meetings
- Article 13: Fraud detection training.
- Article 18: Number provisions added to ensure the fair measurement of production quotas. For example, Article 18, Section 3(b)(i) states (in part):

[The Employer agrees that adequate time must be provided to bargaining unit employees when adjudicating passports, to include diligent scrutiny of fraud indicators.](#)

- Article 19: The Union had proposed 25%, but could only convince Management to agree to 10% of awards funding going toward fraud prevention and detection efforts – but that is still a significant change that will boost the emphasis on quality work.
- In addition, Management agreed to a Union proposal to work with the Union outside of Contract negotiations on setting numerical production standards.

Promotions

Receiving career ladder promotions on time remains an important to bargaining unit employees. Indeed, it was the employees' NUMBER ONE issue that they wanted the Union to address in the 2000 – 2001 Contract negotiations. Information on career ladder promotions is found in Article 15. All of the improvements made in the 2001 Contract were included in the 2009 Contract.

When the parties bargained from 2005 to 2009 for the July 20, 2009 Contract, they agreed that both sides would be able to pick one sentence to put in bold for emphasis when the Contract was published. The Union's pick is found in the second paragraph of Article 15, Section 7d:

The promotion will be effective at the earliest eligibility date when these requirements have been met. **In the event that processing is not timely, the promotion will be made retroactive to the date it should have been effected.** *<Emphasis in original>*

Paperwork: A number of important provisions are included in Article 15, Section 7c regarding documentation provided to the employee. An employee who is being recommended for promotion will receive a copy of the recommendation. An employee who is not being recommended will receive a list of the areas to work on, in writing, if requested.

Remember:

- An employee who was rated Fully Successful, and who has the required 52 weeks at the current grade level, may be promoted at the earliest eligibility date.
- Receiving an Excellent or Outstanding rating is not a requirement to be promoted.
- The failure to promote an employee can be grieved.

Evaluations/Appraisals

The Union has received many complaints about unfair or inaccurate appraisals over the years. Appraisals/evaluations are required by the Contract to be fair and accurate. Article 18 covers evaluations as well as factors that affect evaluations, such as changed in job elements.

There are a large number of changes to Article 18, which received perhaps the most attention by the Union negotiators as this article is closely related to the issue of the integrity of the passport issuance process (see above). Make sure to read Article 18

carefully. There are provisions about non-productive time, the timely notification of errors, fair measurement of work, and many other issues of great concern to employees.

Remember:

- Awards are automatically tied in to evaluations at the Outstanding level.
- Bargaining unit employees must receive two performance reviews (aka “interim evaluations”) during the year
 - First progress review: Normally by June 1st
 - Second progress review: Normally by October 1st
- Employees must receive a notification of changes in job elements and also have time to get used to those changes prior to being evaluated on them. In the old Contract there was only a 7-day notification period – that is now 30 days. In the old Contract there was a 21-day adjustment period – that is now 30 days. See Article 18, Section 12.
- Promotions are automatic for certain levels (see Article 15), and are justified at every level, for employees who receive Excellent or Outstanding evaluations.

QUESTION: Can an employee grieve the rating given to him/her in the annual appraisal?

ANSWER: Yes! Some employees have mistakenly believed that appraisals cannot be grieved, but that is not true. Local 1998 has filed a number of grievances – some successful, others not – challenging the ratings given to employees.

Work Schedules

Many employees highly value having options in work schedules, in order to accommodate family, personal, or commuting issues. Work schedule rules are spelled out in Article 25, Article 26, and Article 27 of the Contract.

NOTE: Article 27 “Second Shift and Night Shift” was added to the old 2001 Contract as an amendment in 2008. At that time it was numbered Article 38.

Remember:

- Each article has a separate meaning and sphere of influence:
 - Article 25: This covers the standard 8-hour day/40-hour week work schedule (normally Monday – Friday).
 - Article 26: This covers all of the daytime deviations from the standard work schedule. If the Article 25 standard schedule is 8:00 AM to 4:45 PM (with

the 45 minute lunch required by Article 25), then an 8:00 AM to 4:30 PM (with 30 minute lunch allowed by Article 26) or a 7:45 AM to 4:30 PM schedule would be considered “Flexitours” governed by Article 26. All of the Compressed Work Schedules (CWS) are listed in Article 26.

- Article 27: This covers the second shift and night shift schedules, as well as the movement of employees from the day to the night shifts, and vice versa.
- The Union and Management in each office should work out a local agreement in order to avoid future misunderstandings.
- Management cannot unilaterally terminate work schedule options. If either party seeks to make a change to a local agreement or a past practice, those changes can only be made in the Union/Management Committee meeting (see Article 4) or via traditional negotiations (see Article 12).
- For Compressed Work Schedules (CWS), the negotiability (lawfulness) of any Union proposals to change the CWS options or how the program is administered are not affected by Management Rights (found in Article 5 of the Contract and 5 U.S.C. 7106).
- If Management seeks to terminate a CWS and the Union disagrees, then Management may not unilaterally terminate the CWS; instead, Management must contact the Federal Service Impasse Panel (FSIP) after mediation over the dispute has taken place. The provision under the old 2001 Contract for Management to temporarily suspend the CWS for one pay period each year has been deleted.

Employee Rights

Employees have a number of rights spelled out in the Contract, including their Weingarten Rights (see Article 6, Section 3 of the Contract and Chapter 4 of this Steward Manual) and the right to be a member of the Union (see Article 6, Section 1 of the Contract).

Two other important rights that employees have are the right to be treated with respect and dignity and the right to be counseled in a private setting. These are found in Article 6, Section 7 and 17, respectively.

A number of additions were made in Article 6 from the previous Contract. These include:

- Rights during meetings: See Sections 2, 3 and 4.
- Dress Code: See Section 9. A “Casual Friday” (or some other day wear jeans can be worn and neckties not required) is now required for all offices. Also, Union and Department of State logo wear must be permitted in all offices.
- Privacy: See Sections 10, 15, 17, 24, and 27.
- Sign-language interpreters: See Section 29.
- Religious freedom: See Section 27.

- Food and drink policy: See Section 26.

Upward Mobility

Upward Mobility is governed by Article 16 of the Contract. While Upward Mobility has always been part of the Contract, there was never an actual requirement that it be used up until now. While it is not the number that the Union had originally sought, the Union at least got its foot in the door by convincing Management to agree to advertise at least one position using Upward Mobility each year for the first three years of the Contract. See Article 16, Section 5.

Other changes were made to the article concerning the process by which candidates are ranked.

Union/Management Cooperation

The Union and Management agreed to a number of changes in Article 4, but the most significant point is that it was continued and retained. The “Union/Management Councils” are now called “Union/Management Committees” but still go by the “UMC” acronym. A number of provisions addressing official time (including meeting minutes) were added. One major change is that the decisions by the UMC must now be made unanimously rather than by consensus. Another significant clarification is that any committee – not just the UMC – where bargaining unit employees are included must have the BUE participation determined by the Union. This includes issues like “quality of life” and “desk sharing” committees.

One other major change is that UMC’s are no longer contractually required in offices that did not have an existing UMC already in place, though those offices are “encouraged” to have them.

See Article 4 and Chapter 12 for more information.

Management Rights

There was no substantive or significant changes to Article 5 “Management Rights.” However, there was an important clarification. In the old Contract, the language from 5 U.S.C. 7106 (which spells out Management Rights under the law) was altered to say “article” (referring to the Contract) instead of “section” and “chapter” (referring to the 5

U.S.C. Chapter 71). That caused confusion in some circumstances and was used, unsuccessfully, by Management at an arbitration hearing in 2004 to argue that the entire Contract was able to be altered and disregarded by Management. The parties agreed to a simple fix – just note what the law states and quote from it verbatim (Article 5, Section 2 of the Contract):

MANAGEMENT RIGHTS: Management rights are specified in law and Executive Order. The Parties acknowledge that 5 U.S.C. 7106 states as follows:....

Definitions and Index

A number of new terms are now defined in Article 3 “Definitions” while an Index has been added to the end of the Contract. These tools should aid in understanding and in finding relevant Contract references.

For example, a Union Steward looking up “official time” would not just go to Article 7 of the Contract. The Index shows that “official time” is referenced in nine different articles.

A number of terms have been added to Article 3 that will help clarify their meanings for employees, including “Absent Without Leave (AWOL),” “Leave Without Pay (LWOP),” “Service Computation Date (SCD),” and “Weingarten Right.” Other terms will standardize usage and put Union Stewards, Management officials, and employees from disparate offices on the “same page” in communications, including “Days,” “Local,” “Master Agreement,” “Official Time,” and “Regular Day Off (RDO).”

One very significant definition is for the word “Emergency”, which Management had at one point disputed whether it could be negotiated in the Contract. The parties agreed to this definition:

EMERGENCY SITUATION: A sudden, unexpected occurrence or set of circumstances demanding immediate action. Cyclical or foreseeable fluctuations in workload and matters of administrative or personal convenience do not constitute an emergency situation.

This is an important term to define, because 5 U.S.C. § 7106(a)(2)(D) states that Management has the right “to take whatever actions may be necessary to carry out the agency mission during emergencies.” When this provision was being discussed, the Union pointed out that during the workload debacle of 2007 (when the backlog was about 3 million applications pending nationwide, applicants waiting up to 16 weeks for a routine passport, and mandatory overtime ordered on a nationwide basis for the first time ever) Management never asserted or claimed that the situation was an

“emergency.” The Union did concede that Hurricane Katrina’s effects on the New Orleans Passport Agency in 2005 did constitute an “emergency.”

Revised April 10, 2012