


## Interpretive Guidance Article 39


Council 169 and the Employer recognize that the language of Article 39 is unclear and may lead to interpretation questions and inconsistent application of stays. In order to eliminate any misinterpretation of the agreement and ensure the contractual right of employees to obtain stays, the parties provide the following binding guidance:

- A stay is defined as a delay of the effect of an action after the Employer issues a decision notice. An action cannot be stayed after it is effective. It was not the intent of the parties to stay actions that have already occurred. Had that been the intent of the parties, the MLA would have addressed whether such employees would receive back pay for the time between the effective date of the action and the date it was cancelled.
- The intent of the parties was to offer an opportunity for an employee who is being disciplined by suspension, change to lower grade or removal to obtain a stay of the action while a grievance or MSPB appeal is being pursued. Given that all actions that are subject to stays are two step procedures requiring a proposed notice and a decision notice, ample time is available for the employee to obtain advice and assistance from the Union and request a timely stay. At least 5 workdays will be given between the date of the decision letter and the effective date except for actions that are inappropriate for a stay.
- Stays must be requested by the employee prior to the effective date of the action in order to be considered requested in a timely manner. The language in Section 1 that indicates an employee has 10 workdays to file a grievance to obtain a stay is tied to the negotiated grievance procedure in Article 36. Three clarifying examples of stays are:
  - An employee receives a decision notice on Monday, November 3<sup>rd</sup>, with an effective date of Friday, November 19<sup>th</sup>. The employee has 10 workdays from November 3<sup>rd</sup> to file a timely grievance and to request a stay. The ten workday limit is based upon the requirements of Article 36.
  - An employee receives a decision notice on Monday, November 3<sup>rd</sup> with an effective date of Friday, November 19<sup>th</sup>. The action is appealable to MSPB and the employee elects to file such an appeal. The 10 workday limit does not apply, and the employee has until November 19<sup>th</sup> to submit the appeal and request a stay.
  - An employee receives a decision notice on Monday, November 3<sup>rd</sup>, with an effective date of Monday, November 10<sup>th</sup>. Regardless of the whether the employee chooses to appeal or grieve, the employee has until November 10<sup>th</sup> to request a stay.
  - Article 39 does not apply to Reduction in Force actions.

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