



Departmental  
Management

November 9, 2017

Office of the  
Assistant Secretary  
for Administration

**TO:** Dr. Chavonda Jacobs-Young, Administrator  
Agricultural Research Service

Office of Human  
Resources  
Management

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**SUBJECT:** Review of the Renegotiated Collective Bargaining Agreement (CBA) between the USDA Agricultural Research Service (ARS), Plains Area and the American Federation of Government Employees Local 3748

By memorandum, dated August 24, 2017, this office transmitted to the parties an agency head review disapproving the Collective Bargaining Agreement (CBA) submitted to our office on August 2, 2017. Specific language contained within the CBA was determined not in conformance with applicable law, rule and regulation. On November 9, 2017, this office received a renegotiated CBA between the parties adopting the Department's recommended changes.

On behalf of the Secretary of Agriculture and in accordance with 5 U.S.C. § 7114(c), the Department has conducted an Agency Head Review of the renegotiated CBA executed on November 8, 2017. After review of the renegotiated provisions, the Department finds the CBA to be consistent with current applicable law, rule and regulations. Therefore, the CBA shall have the effective date of this memorandum.

Enclosure

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## PREAMBLE

The United States Department of Agriculture, Agricultural Research Service (ARS), and the American Federation of Government Employees, Local No. 3748 (Union) agree that the wellbeing of employees and efficient administration of the Government are benefitted by the statutory protection of the right of employees to organize, bargain collectively and participate through a labor organization of their choosing, in the formulation and implementation of personnel policies and practices affecting the conditions of their employment.

References in this agreement to areas shall be interpreted to mean only Agency-USDA, Departmental level, ARS-Subdivision of USDA, and "location" -actual physical locations and their work sites:

Fargo, ND and East Grand Forks, MN;  
Madison, WI, Marshfield, WI Sturgeon Bay, WI and Milwaukee, WI;  
Mandan, ND;  
Morris, MN;  
Brookings, SD;  
St. Paul, MN; and  
Grand Forks, ND

**ARTICLE 1**  
**GOVERNING LAWS AND REGULATIONS**

**Relationship to Laws and Regulations**

A. If ARS proposes changes in its directives which directly affect negotiable matters, ARS will notify the Union and consider any comments provided by the Union in a timely manner.

B. Changes in government wide rules, regulations, laws, or directives, may be subject to negotiations in accordance with 5 U.S.C., Chapter 71.

C. Where any Agency regulation conflicts with this agreement and/or supplemental Memorandums of Understanding (MOUs), the agreement shall govern.

**ARTICLE 2**  
**RECOGNITION COVERAGE**

**Section 1 – Definition of Bargaining Unit**

A. The bargaining unit (BU) will be designated to include all nonprofessional employees located at: Fargo, ND; Mandan, ND; Grand Forks, ND; Brookings, SD; St. Paul, MN; East Grand Forks, MN; Morris, MN; and Madison, WI, plus all of the professional employees at Grand Forks, ND (see Preamble covering satellite locations).

B. Excluded from the unit are all professional employees except at Grand Forks, ND, management officials, supervisors and other employees described in 5 U.S.C. 7112(b).

C. Professional as defined by the Federal Service Labor-Management Relations Statute at 5 U.S.C. § 7105(a)(15).

**Section 2 - American Federation of Government Employees (AFGE) Exclusive Recognition**

A. As the sole and exclusive representative, the Union is entitled to act for, speak for, and to negotiate agreements covering all employees in the BU. The Union is responsible for representing the interests of all employees in the BU regardless of their status as dues-paying members.

B. Due to the Union's exclusive recognition, the Agency will not deal directly with bargaining unit employees (BUEs) on matters such as working conditions, personnel policy or practices, or by engaging in formal discussions without Union notification. This does not include work assignments or performance discussions.

**Section 3 – Changes in the Bargaining Unit**

A. Contraction or expansion of the unit may only be accomplished in accordance with existing statutory protocols identified in 5 U.S.C.

B. When a position is going to be removed from the BU, the Agency will provide notice to the Union thirty (30) calendar days prior to the effective date. The Federal Labor Relations Authority (FLRA) will determine whether the removal of any position from the BU is appropriate. A clarification of unit petition will be filed with the FLRA in order for this determination to be made, and the position will remain in the BU while the petition is being resolved.

**ARTICLE 3**  
**MATTERS APPROPRIATE FOR NEGOTIATION**

**General**

A. The establishment of new conditions of employment or changes to established conditions of employment that are not in conflict with the provisions of this agreement and that are within the provisions of the Labor-Management Relations Statute will be accomplished within the framework of this article.

B. The Parties agree that matters appropriate for negotiations are outlined in the statute at 5 U.S.C., Chapter 71.

**Section 1 – Nonnegotiable Items**

If the Agency declares an item nonnegotiable, it will provide the Union with a brief written description of why such a determination was made. If the Union disagrees with the Agency's written determination of non-negotiability, it may seek further consideration in accordance with 5 U.S.C., Chapter 7117.

**Section 2 – Written Notice, Extensions, Implementation**

A. The Parties recognize the importance of efficiency of operations to meet the changing needs of the Agency and the American public that is served. To this end, the Parties agree that when the Agency provides written notice to the designated Union Official(s) of a proposed change(s) in personnel policies, practices and working conditions of more than a de minimis nature, it will include readily available documentation/information supporting the reason for the change. Should the Union elect to negotiate, the Union will respond with written negotiable proposals within ten (10) business days (Monday-Friday, excluding weekends and holidays) of receipt of the Agency's notification/proposal. Union proposals must be within the realm of the changes being proffered. Union proposals will be submitted to the LRO, or designee. If the Union elects not to respond, or if written proposals are not submitted within the time limit, the Agency will have no obligation to bargain on the matter and may implement the change(s).

B. Extensions may be granted by mutual agreement provided there is no adverse impact on the Agency for granting the delay.

C. Changes will not normally be implemented until all bargaining obligations are met. If extenuating circumstances occur, the Agency will notify the Union of the situation as soon as is practicable, and the Parties may agree to post-implementation bargaining on changes in working conditions.

**ARTICLE 4**  
**UNION RIGHTS AND RESPONSIBILITIES**

**Section 1 - Exclusive Representative**

In accordance with 5 U.S.C. 7114 (a) (1), "A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership."

**Section 2 - Union Rights**

A. In all matters relating to personnel policies, practices, and other conditions of employment, the Parties will have due regard for the obligations imposed by 5 U.S.C., Chapter 71, this agreement, and the concept of a cooperative working relationship.

B. Each party shall recognize and meet with the designated representative(s) of the other party at mutually agreeable times, dates, and places that are reasonable and convenient.

**Section 3 - Investigatory Examinations** (Weingarten Rights)

A. As provided in 5 U.S.C., 7114 (a) (2) (B) and Article 15, Disciplinary and Adverse Actions, the Union has the right to be represented at any examination of an employee in the BU by a representative of the Agency in connection with an investigation if:

- (A) any formal discussion between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment; or
- (B) any examination of an employee in the unit by a representative of the Agency in connection with an investigation if-
  - (i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and
  - (ii) the employee requests representation.

B. The Union will determine which representative will be assigned to any particular investigatory examination.

C. The Union representative will be given no less than twenty-four (24) hour notification of such meetings unless precluded by a situation that is urgent in nature. Once the employee requests representation, no further questioning will take place until the representative arrives. If the representative is not available due to work schedules or other representational business, the examination will be postponed and rescheduled by mutual agreement.

D. The Union representative will have the opportunity to request the subject of the meeting as well as an opportunity to meet with the employee prior to the examination.

#### **Section 4 - Union Representatives**

A. The Union will designate its own representatives. The Union agrees to provide management and the Labor Relations Officer or designee a current list of names, email addresses, physical addresses, and telephone numbers of its Union Officials on an annual basis and/or when a change in Union Officials occurs. The Union will provide notification to management within fifteen (15) business days of changes in Union representatives. Management agrees to electronically disseminate the list to all employees within thirty (30) days after its receipt. Further, management agrees to provide all new hires with a copy of the list during new employee orientation.

B. Union representatives will receive official time for the performance of representational duties in accordance with Article 28, Official Time and Duty Time.

#### **Section 5 - National and District Union Officials**

In addition to the officers, stewards, and unit members of Local 3748, ARS agrees to recognize the national and district officers of the AFGE National and District Officials will be provided access to all unit locations to conduct representational duties in accordance with Agency and/or local rules and regulations that apply to non-employees.

#### **Section 6 - Membership Drives**

The Union will be given access to conference rooms and auditoriums for meetings requiring the size and space necessary for union meetings and membership drives, before or after duty hours or during lunch periods if such space is not already committed. The Union will follow the same reservation process and procedures as all other users.

#### **Section 7 - New Employee Orientation**

The location will provide adequate advance notice to the Union when new employees are scheduled for orientation. Once the orientation has been completed, the Union representative will be introduced to the group of new employees. The Union will have the right to discuss the benefits of being a Union member and its internal structure. Union representatives may have a total of fifteen (15) minutes on each occasion to address the group.

#### **Section 8 - Agreements/Union Materials for New Employees**

Management will provide to new employees, along with documents provided by the Agency, a package of Union material (e.g., a copy of the current collective bargaining agreement, and a list of AFGE Local 3748 officers and/or representatives) provided by the Union. It is understood that the Union will maintain an adequate supply of union material for distribution by the Agency. Management agrees to provide an electronic copy of the agreement to each new employee.

#### **Section 9 - General Distribution of Materials**

A. Union officials and stewards may distribute information for representational purposes during employee breaks and lunch times. They shall be considered performing official duties and shall be entitled to a break of equal time.

B. The Union is permitted to publish and update the names, work locations, and telephone numbers of the Union officials on the shared drive and the union bulletin board.

C. The Union may distribute general information to employees on non-duty time.



**Section 10 - Travel to Perform Representational Duties**

A. Union representatives will be allowed a reasonable amount of travel and per diem in conjunction with official time to perform representational activities described in Article 28. All travel related to representational duties will be considered based on availability of funding. Requested travel may be postponed due to valid operational need.

B. The Union representative will notify their immediate supervisor, or designee, and the grievant's immediate supervisor or designee, of the details of the proposed visit. Dates and times of the meeting(s) will be mutually agreed upon and confirmed in writing by the Parties.

C. Management will be apprised of the request for travel as far in advance as possible. Prior to the travel, the Union representative will request in writing approval for travel and per diem expenses from their immediate supervisor, or designee. The written request will include the name of the employee(s) to be visited, the site, the nature of the visit, the expected departure/arrival/return times and dates, and the types of expenses expected to be incurred (e.g., mode of transportation, lodging costs, etc.).

D. Travel will be approved promptly. When considering expenses, management may, for example, require the Union representative to modify the mode of transportation and/or duration of the travel as well requiring the use of available technology, e.g., video teleconferencing (VTC), Skype, etc.

E. The LRO or designee will advise management at the employee's location and management at the location of the Union representative of the details of the proposed visit.

F. The grievant's immediate supervisor or designee will make the employee available to meet with the Union representative at the agreed date(s) and time(s), except in emergency situations.

**Section 11- Training for Union Officials**

A. Workload permitting, Union representatives will be allowed official leave during each year of this agreement to attend training of mutual benefit to the Parties. The total amount of Union sponsored training granted in any calendar year to all Union representatives will be a total allotment of eighty (80) hours. Requests for official leave will be in writing and will be accompanied by a copy of the agenda for the training. Such requests will be presented to the supervisor at least fifteen (15) calendar days prior to the beginning of the training.

B. The total number of training hours may be extended by mutual agreement. The request from the Union needs to be addressed to the LRO or designee.

**Section 12 – Listing of Bargaining Unit Employees**

Upon request directed to the LRO or designee, annually the Union President shall receive a list of all current BUEs.

**Section 13 - New Directives**

ARS will provide the Union with a copy of all newly issued or modified ARS directives.

## **ARTICLE 5 EMPLOYEE RIGHTS**

### **Section 1 - General**

A. In an atmosphere of mutual respect, all employees shall be treated fairly and equitably and without discrimination in regard to their political affiliation, union activity, labor organization affiliation or nonaffiliation, race, color, religion, sex, pregnancy, national origin, gender, sexual orientation, marital status, age, genetic information, status as a parent, non-disqualifying handicapping conditions, any other non-merit-based factor, unless specifically designated by statute as a factor that must be taken into consideration when awarding such benefits, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available. Employees will also be afforded proper regard for and protection of their privacy and constitutional rights. It is therefore agreed that management will endeavor to establish working conditions which will be conducive to enhancing and improving employee morale and efficiency.

B. Instructions will be given in a reasonable, respectful, and constructive manner. Such guidance will be provided in an atmosphere that will avoid public embarrassment or ridicule. If an employee is to be served with a warrant or subpoena, it will be done in private without the knowledge of other employees to the extent it is within management's control.

C. No disciplinary or adverse action will be taken against an employee upon an ill-founded basis such as unsubstantiated rumors or gossip.

D. No employee will be subjected to intimidation, coercion, harassment, or unreasonable working conditions as reprisal nor be used as an example to threaten other employees. An employee who exercises any statutory or contractual right shall not be subjected to reprisal or retaliation, and shall be treated fairly and equitably.

### **Section 2 - Rights to Union Membership**

Under 5 U.S.C., 7102, each employee shall have the right to form and join a union; to act as a designated Union representative, and to assist the Union without fear of penalty or reprisal. This right shall extend to participation in all union activities including service as officers and stewards.

Except as otherwise provided, such employee rights include the right to:

1. act for the Union in the capacity of a representative and the right in that capacity to present the views of the Union to heads of agencies and other officials of the Executive Branch of Government, Congress, or other appropriate authorities.
2. engage in collective bargaining with respect to conditions of employment through representatives chosen by employees.

3. be represented by an attorney or other representative other than the Union, of the employee's own choosing, in any appeal action not covered under the negotiated grievance procedure. The employee may exercise grievance or appellate rights, which are established by law, rule, or regulation.

### **Section 3 - Employee Rights During Investigations**

An employee has the right (commonly known as the Weingarten right) to be represented by the Union during any examination of the employee by a representative of the Agency in connection with an investigation if he or she reasonably believes that the examination may result in disciplinary action against him or her and he or she requests representation.

### **Section 4 - Rights to Union Representation**

Management recognizes an employee's right to assistance and representation by the Union, and the right to meet and confer with Union representatives in private during duty time, consistent with Article 4. If the employee and the local representative cannot be released immediately, the employee will be released for a mutually agreed time frame between the Parties. If such release is not made, appropriate relief from time frames will be afforded. The Agency agrees to annually inform all employees of the right to Union representation under 5 U.S.C., 7114 (a) (2) (B) by appropriate means.

### **Section 5 - Use of Recording Devices**

No electronic recording of any conversation between an employee and Agency official may be made without mutual consent except for investigations by the Office of Inspector General or other law enforcement. When a recording is made with mutual consent, the employee will be given the opportunity to review the transcript for accuracy and will be provided with a copy of the recording and transcript if one is made. Information obtained in conflict with this section will not be used as evidence against any employee.

### **Section 6 - First Amendment Rights**

Employees have the right to present their views to Congress, the Executive Branch, or other authorities and to otherwise exercise their First Amendment rights without fear of penalty or reprisal.

### **Section 7 - Access to Documentation**

A. Employees have a right to be made aware of and receive copies of any information specific to them personally maintained under their name and/or social security number. The Agency agrees that the official record of the employee is the electronic Official Personnel File (eOPF).

Employees may access their eOPF while on duty time.

B. Employees have a right to access information pertaining to conditions of employment such as laws, rules and regulations published by the Office of Personnel Management (OPM), the U.S. Department of Agriculture (USDA), etc. These publications or policies are available for employees to review on the employer's and other government Agency websites.

### **Section 8 - Personal Rights**

A. Employees have the right to engage in outside activities and employment of their own choosing and otherwise conduct their private lives as they see fit in accordance with 5 CFR, 2635; 5 CFR, 735; and 5 CFR, 8301.

B. It is understood that if an employee engages in outside employment it should not impair their ability to perform his or her job.

C. Without prior approval, an employee may participate in the activities, not prohibited by law or government-wide regulation, of national or state political Parties and may participate in the affairs of or accept an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, and non-profit educational and recreational, public service, or civic organization.

D. An employee shall not accept a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which the acceptance may result in or create the appearance of conflicts of interest.

### **Section 9 - Dignity and Self Respect In Working Conditions**

Employees, individually and collectively, have the right to expect, and to pursue, conditions of employment which promote and sustain human dignity and self-respect.

### **Section 10 - Employee Right to Privacy**

A. Searches and seizures by ARS and/or the location of the private property of its employees are subject to Constitutional constraints. It should be understood that the employee's person and personal items owned by the employee, such as pocketbooks, briefcases, personal cell phone, or other like materials, are not subject to search without reasonable suspicion that criminal activity is involved.

B. Employees may store personal papers and effects in their offices, desks, file cabinets, lockers, and government vehicles. However, a search or seizure of such items without a warrant may be justified if ARS and/or the location has reasonable grounds for suspecting that the search will produce evidence that the employee is guilty of work-related misconduct, or that the search is necessary for a non-investigative work-related purpose, such as insuring the internal security of ARS and/or the location. Security concerns may necessitate searches of ARS and/or the location space or employees, subject to Constitutional constraints.

C. If a search is to be conducted, the primary investigator and an independent party will be present for the search. The employee may or may not be notified prior to the search depending on the circumstances necessitating the search.

D. As an exception, if searches are used when individuals enter a facility, then such search methods must be conducted consistently for all individuals.

### **Section 11 - Whistle-Blower Protection**

Consistent with the Whistleblower Protection Act, currently codified at 5 U.S.C., 2302 (B) (8), employees shall be protected against reprisal of any nature for the disclosure of information not prohibited by law or Executive Order which the employee reasonably believes evidences a violation of law, rule or regulation, or evidences mismanagement, a waste of funds, an abuse of authority, or danger to public or employee health or safety.

### **Section 12 - Unlawful Orders**

An employee has the right to refuse orders that would require the employee to violate an applicable law or cause imminent danger. The employee will promptly bring his/her specific concerns to the supervisor or appropriate ARS and/or location official. The ARS and/or location official will consider the employee's concern and will promptly notify the employee whether the order is lawful or unlawful. This refusal to obey an unlawful order or one that could cause imminent danger will not subject the employee to disciplinary or adverse action.

### **Section 13 - Improper Orders**

An employee has the right to question an improper order that would direct him/her to act outside the scope of practice, privileges, competencies, or qualifications. The employee will promptly bring his/her concern about the improper order to an appropriate supervisor. The supervisor will promptly apprise the employee whether the order was proper or improper. A refusal to obey an improper order will not subject the employee to disciplinary or adverse action or major adverse action.

### **Section 14 - Conflicting Orders**

When employees receive conflicting orders, the employee will bring the conflict to the attention of the supervisor who gave the last order or another appropriate supervisor. The employee will be given a clarified order. The employee will not be subject to disciplinary, major adverse actions for following the clarified order.

**ARTICLE 6**  
**MANAGEMENT RIGHTS**

**General**

The Union recognizes the rights of ARS and agrees to demonstrate an affirmative willingness to deal with the appropriate management representatives on matters involving the administration of this agreement.

**Section 1- Rights and Obligations of the Employer**

A. This article shall be administered in accordance with 5 U.S.C., Chapter 71, appropriate government-wide rules, and the terms of this agreement. Management officials of the Agency retain the following rights outlined in 5 U.S.C., 7106, Management Rights; these include, but are not limited to the following:

- (A) (1) determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and
  - (2) in accordance with applicable laws;
    - (a) hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or to take other disciplinary action against such employees;
    - (b) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the Agency operations shall be conducted;
    - (c) with respect to filling positions, to make selections for appointments from:
      - (i) among properly ranked and certified candidates for promotion; and
      - (ii) any other appropriate source; and
    - (d) take whatever actions may be necessary to carry out the Agency mission during emergencies.
- (B) Nothing in this section shall preclude any Agency and any labor organization from negotiating :
  - (1) At the election of the Agency to negotiate on the numbers, types, grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods and means of performing work;

(2) procedures which management officials of the Agency will observe in exercising any authority under this section; or

(3) appropriate arrangements for employees adversely effected by the exercise of any authority under this section by such management officials.

B. In accordance with Article 3, Matters Appropriate for Negotiations, the Agency retains the right to implement changes after bargaining obligations have been met, or impasse has been reached.

C. Management officials and supervisors retain the right to meet with employees and without the presence of a union representative concerning any matter not covered by 5 U.S.C., 7114 (a) (2).

D. The Labor Relations Officer (LRO) or designee will be the point of contact for labor relations matters.

**ARTICLE 7**  
**USE OF FACILITIES AND SERVICES PROVIDED BY THE AGENCY**

**Section 1 - Meeting Space**

A. Management recognizes the importance and value of the Union's mission and purpose. Accordingly, management agrees to furnish meeting space to the Union appropriate for carrying out its representational duties in locations easily accessible to employees within the facility provided it does not conflict with official functions and activities occurring between Monday through Friday during the hours of 8:00 a.m. and 4:30 p.m.

B. Requests for the use of official facilities will be made at least one (1) work day prior to the date of the meeting and will be directed to the Research Leader (RL)/Center Director (CD) and/or in accordance with local procedures.

C. The Union will leave the facilities in an orderly condition.

**Section 2 - Bulletin Boards**

Three (3) bulletin boards at Fargo, two (2) at Mandan, one (1) at Brookings, two (2) at Grand Forks, and space at other BU locations will be provided for the use of the Union for the display of union literature, notices, and information of interest. The Union will maintain the appearance of the bulletin boards. The Union representative may authorize the posting of material by initialing the documents.

**Section 3 – Union Offices and Use of Equipment**

A. The union office will be provided with a locking four (4)-drawer file cabinet, computer, and telephone with an answering machine at each location where there is a designated Union representative.

B. If practicable, this office equipment will be located in close proximity to the work sites of the Union representatives. Upon request and dependent upon available office space, the Union President and Chief Steward will be provided office space if they do not already occupy private office space. There will no more than one (1) union office at each location.

C. Union officials shall be granted reasonable access/use to computer, office phone, printer, fax, scanner /copier.

D. This will serve as the complete list of all items to be furnished to the Union by the Agency during the length of the Collective Bargaining Agreement.

**Section 4 - Use of Telephones**

The Parties agree that the Union officers will follow the "Limited Personal Use" policy for the use of all Agency-provided electronic equipment and the Union may be responsible for payment of excessive fees incurred for the use of such equipment.



**Section 5 - Internal Mail**

A. The Agency agrees the Union may utilize the internal mail and email system to distribute representational related materials to employees in conjunction with the "Limited Personal Use" policy.

B. The Union at each location may use the location internal mail and email system for representational purposes.

C. Where practicable, employees will be provided with an individual mail box/slot.

## ARTICLE 8 GRIEVANCE PROCESS

### **Purpose**

The purpose of this article is to provide a mutually acceptable method for the prompt and equitable settlement of grievances filed by bargaining unit employee(s), the Union or the Agency.

### **Section 1 – Coverage and Scope**

A. A grievance means any complaint:

1. by an employee(s) concerning any matter relating to employment of the employee;
2. by the Union concerning any matter relating to the employment of any employee;  
or
3. by any employee(s), the Union or the Agency concerning:
  - a. the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or
  - b. any claimed violation, misinterpretation or misapplication of any law, rule or regulation affecting conditions of employment.

B. Grievances on the following matters are excluded from the scope of this procedure:

1. any claimed violation of subchapter III of chapter 73 of Title 5, USC relating to prohibited political activities;
2. retirement, life insurance or health insurance;
3. a suspension or removal under 5 USC, 7532 relating to national security;
4. any examination, certification selection or appointment; or
5. the classification of any position which does not result in the reduction in grade or pay of an employee;
6. separation of employees during their probationary period.

C. Adverse Actions appealed to Merit System Protection Board (MSPB)

**Section 2– Exclusivity**

A. Grievances may be initiated by employee(s) covered by this agreement and/or their Union representative or by the Agency. Representation of BUEs shall be the sole and exclusive province of the Union.

B. Except as provided by law, this is the exclusive procedure available to employees, the Union, or the Agency for the resolution of grievances within its scope.

**Section 3 – Representation**

A. Prior to filing a grievance, an employee may elect to be self-represented or represented by the Union. When an employee elects to be represented by the Union, the Union President or designee will appoint that representative.

B. In accordance with 5 U.S.C., Chapter 71, the Union has the right to be present during any proceeding under the negotiated grievance procedure. The Agency will provide the Union reasonable advance notice of any grievance meeting/discussion when the Union is not the designated representative.

C. If the Union is not the designated representative, a copy of the grievance will be provided to the Union within five (5) business days of the filing date. A copy of each grievance decision will be timely provided to the Union.

D. An employee will be notified of their right to Union representation. At the time of notification the employee and/or the Union will submit a written notification to management identifying the selection of Union representation or their declination of Union representation.

E. Management will forward the written notification of the election or declination of Union representation to the Union President or designee.

F. Where the grievant elects Union representation, meetings, and communication with regard to the grievance and any attempts at resolution shall be made through the designated Union representative.

G. The Parties agree efforts will be made to schedule meetings by mutual agreement within a reasonable time period.

**Section 4 – Resolution of Grievances and Employee Standing**

A. The Union and the Agency agree that grievances should be settled in an orderly, prompt, and equitable manner so that the efficiency of the Agency may be maintained and morale of employees shall not be impaired. Efforts shall be made by the Agency and the Union to settle grievances at the lowest appropriate level of supervision. Employees and their representatives will be unimpeded and free from restraint, interference, coercion, discrimination, or reprisal, consistent with 5 U.S.C., Chapter 71, and this agreement, in seeking adjustment of grievances. Employees shall be authorized a reasonable amount of duty time (requested in advanced and

mutually agreeable with management), to prepare and participate in grievances, including individual or group grievances.

B. In cases of group grievances, the Union may select spokesperson(s) from the grieving group who can serve as a group representative to assure efficient use of government time.

C. Grievances can be initiated by one (1) or more employees. When two (2) or more employees have similar grievances (the dissatisfaction expressed and the relief requested are the same), the Parties will, by mutual agreement, process the grievances concurrently.

D. The Parties will attempt to settle grievances at the lowest possible level. However, inasmuch as matters of concern and dissatisfaction arise occasionally among people in any work situation, the filing of a grievance will not be construed as reflecting unfavorably on the employee's conduct or performance.

#### **Section 5 – Grievability/Arbitrability Questions**

The Parties agree to raise any questions of grievability or arbitrability of a grievance prior to the limit for the written answer in the final step of this procedure.

#### **Section 6 – Time Limits**

A. A grievance concerning any matter relating to the employment of the employee may be presented at any time.

B. All the time limits in this article may be extended by mutual consent.

#### **Section 7 – Options**

A. In accordance with 5 U.S.C., 7121, an employee at his/her option may raise matters covered under Sections 4303 (Unacceptable Performance) and 7512 (Adverse Actions) under the appropriate statutory procedures or the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his/her option at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing, whichever event occurs first.

B. Similarly, an employee affected by a prohibited personnel practice under 5 U.S.C., 2302 (b) (1) of the Civil Service Reform Act may raise the matter under a statutory procedure or the negotiated procedure but not both. An employee shall be deemed to have exercised his/her option at such time as he/she timely files a grievance in writing or files a formal complaint under the statutory EEO procedure, whichever event occurs first.

C. Complaints of employment discrimination may be raised as a grievance or as a statutory equal opportunity complaint, but not both.

## **Section 8 – Procedures for Employee Grievances**

A. The written grievance should normally contain a description of the matter(s) being grieved, including:

1. The article(s) of the agreement, law, rule, or regulation alleged to have been violated, or to the employment condition in dispute;
2. statement of the circumstances giving rise to the grievance including the date, if applicable, of the alleged violation;
3. the name of the management official(s) or others alleged to have committed the action grieved;
4. name and position title of the grievant(s) with work telephone number(s);
5. name of Union representative (if any); and
6. the desired relief.

B. Grievance meetings under this procedure normally will be face-to-face, although alternate options may be made available upon mutual agreement by the Parties. The grievant and the Union representative will meet with the designated management official and an Agency representative (if one is designated). The Union and management may be permitted to have an equal number of representatives at all steps of the grievance procedure. If an Agency representative is designated, the Union will be apprised who the representative will be. Normally, this notice will occur not less than three (3) business days in advance of the meeting.

C. Grievances may be hand delivered or delivered through email. The recipient of the grievance shall sign and date the grievance if hand delivered or reply via email. If the grievance is delivered via email and an acknowledgement of receipt of the grievance has not been received within seven (7) calendar days, the Parties will assume the grievance has been delivered and received. Timelines will be preserved if the serving party is able to show the grievance was delivered via email.

D. Management officials designated to be grievance-deciding officials will have the authority to resolve the grievance. The designee will not be someone who decided the issue at a previous step.

E. Grievances should normally be resolved at the lowest level possible. However, there will be times when a grievance may be more appropriately initiated at a higher supervisory level (e.g., when a disciplinary action is taken by the supervisor at the lower level or who clearly has no authority to resolve the issue). When a grievance is initiated at a higher supervisory level, specifically at Step 3, the time limits of Step 1 will apply (refer to Section 9).

F. Through mutual agreement of the Parties, the grievance timeline(s) will be placed in abeyance to allow the Parties to come to consensus or resolution prior to filing a grievance.

G. All grievance decisions will be in writing and state the issue being grieved, a summary of the findings and the rationale for the decision. Copies of relevant documents cited in the decision will be provided if they are not otherwise readily available to the employee.

### **Section 9– Grievance Process**

#### **Step 1:**

- A. An employee and or the Union shall present the grievance according to procedures in Section 8 (as listed above). The grievance will be in writing within twenty-five (25) business days of the date that the employee or Union became aware, or should have become aware, of the act or occurrence; or any time if the act or occurrence is of a continuing nature.
- B. The management official receiving the grievance will meet with the grievant and/or representative, at the request of any party, and provide a written answer within fifteen (15) business days of receipt of the grievance.
- C. The grievance response will include the designation of the next level deciding management official to whom the grievance would be advanced, at the election of the grievant and/or representative.

#### **Step 2:**

- A. If the grievance is not satisfactorily resolved at Step 1, it may be presented to the Step 2 management official or designee named in the written decision letter within ten (10) business days of receipt of the response. The Step 2 management official receiving the grievance will meet with the grievant and/or representative, at the request of any party, within ten (10) business days of receipt of the grievance. The Step 2 official will provide the Step 2 response within ten (10) business days from the date of the meeting.
- B. The grievance response will include the designation of the next level deciding management official to whom the grievance would be advanced, at the election of the grievant and/or representative.

#### **Step 3:**

- A. If the grievance is not satisfactorily resolved at Step 2, it may be presented to the Step 3 management official or designee named in the written decision letter within ten (10) business days of receipt of the response. The Step 3 management official receiving the grievance will meet with the grievant and/or representative, at the request of any party, within ten (10) business days of receipt of the grievance. The Step 3 official will provide the Step 3 answer within ten (10) business days from the date of the meeting.

- B. If the grievance is not satisfactorily resolved in Step 3, the grievance may be referred to arbitration as provided in Article 9, Arbitration. Only the Union or management can refer a grievance to arbitration.

**Section 10 – Management Grievances**

A. A management grievance concerning a continuing practice or a single event may be presented at any time and filed with the Union President. A grievance concerning a particular act or occurrence must be presented to the other party within twenty-five (25) business days of the action or date the moving party became aware of it. The grievance will be filed at the Step 3 level; the Step 1 time lines will apply.

B. When a grievance is filed, the Parties will meet and/or discuss the matter within fifteen (15) business days after receipt unless the grieving party waives the meeting/discussion or obtains an extension. A written decision will be issued within fifteen (15) business days of the meeting or of the date of waiver. If the grievance is not settled by this method, the grieving party may invoke arbitration.

C. Grievance decisions will be in writing and state the issue being grieved, a summary of the findings and the rationale for the decision. Copies of relevant documents cited in the decision will be provided if they are not otherwise readily available to the Parties.

**Section 11 – Grievability/Threshold Determinations**

Threshold matters may be brought up at any time during the grievance procedures. If these threshold matters remain at the point in time where arbitration is invoked, the matters may be bifurcated from the merits of the case. The Parties will select an arbitrator for the threshold matters, and submit written arguments. If the determination is made that the issue is arbitrable, the arbitrator to whom the issue is submitted shall have the authority to settle the threshold issue.

## **ARTICLE 9 ARBITRATION**

### **Section 1 -Notice to Invoke Arbitration**

Only the Union or management may refer to arbitration any grievance that remains unresolved after the final step under the procedures of the Article 8, Grievance Procedures. A notice to invoke arbitration shall be made in writing to the opposite party (Union President or designee or the Labor Relations Officer or designee), within twenty-five (25) business days after receipt of the decision rendered in the final step of the grievance procedure. If arbitration is not invoked within the twenty-five (25) business days, the decision will be final and binding.

### **Section 2 -Arbitration Procedure**

A. On or after the date of the notice to invoke arbitration, the party invoking arbitration will request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven (7) impartial persons to act as an arbitrator. Fees associated with obtaining said list will be paid by the party invoking arbitration.

B. The Parties shall meet within fifteen (15) calendar days after receipt of such list to select an arbitrator (this may be done by telephone or other various means of communications). If the Parties cannot mutually agree upon an arbitrator to hear the case, the Parties will alternately strike names from the panel until one (1) name remains. The remaining arbitrator will be selected.

C. The Parties agree that if the striking method is applied, the Agency will strike first. The remaining person shall be the duly selected arbitrator.

D. Following the selection the Parties will, within ten (10) business days, notify FMCS of the name of the arbitrator selected. The Parties will jointly notify the selected arbitrator; dates and times will be mutually agreeable to all Parties. The time limits may be extended by mutual agreement.

### **Section 3 - Procedures for Arbitration Hearing**

A. The procedures used to conduct an arbitration hearing shall be determined by the arbitrator, with agreement of the Parties.

B. The Parties agree to follow these general guidelines:

1. Both Parties shall be entitled to call and cross-examine witnesses before the arbitrator. All bargaining unit witnesses necessary for the arbitration will be on duty time, if otherwise in a duty status.

When necessary, management will schedule bargaining unit witnesses on duty status during the arbitration hearing. Such schedule changes may be made without regard to contract provisions on Article 10, Hours of Work and Overtime. If



multiple witnesses will provide duplicate testimony, the Parties may agree to stipulate to the testimony and have one spokesperson speak on behalf of the group.

2. The grievant will be granted adequate duty time to prepare for and participate in arbitration.

C. A reasonable amount of preparation time for arbitration will be granted in accordance with the provisions of Article 28, Official Time and Duty Time.

D. The site of the arbitration normally will be the facility of the affected employee. If either party wishes to have a change of venue from the Agency-provided facility, the requesting party is responsible for the fees and costs associated with the change.

E. The Parties will attempt to submit a joint statement of the issue or issues to the arbitrator. If the Parties do not agree to file a joint submission, each shall make a separate submission. The arbitrator shall determine the issue or issues to be heard.

F. The Parties will be entitled to submit post-hearing briefs (including rebuttal briefs) or closing statements. It is further agreed that all documents given to the arbitrator are also provided to the opposing party's representative at the same time.

G. The arbitrator's decision shall be final and binding. However, either party may file an exception to the arbitrator's award in accordance with applicable law and regulation(s). Any dispute over the interpretation of an arbitrator's award shall be returned to the arbitrator for clarification.

H. The arbitrator will be requested to render a decision within sixty (60) calendar days.

I. The Parties agree to exchange witness lists and/or information that is germane to the case with each other prior to the arbitration. Witness lists and/or other germane information to the case will be exchanged not later than ten (10) business days prior to the scheduled arbitration.

J. Questions raised as to whether a witness is necessary or if the information is germane, will be resolved by the arbitrator.

K. The time limits in this article may be extended by mutual agreement.

L. An arbitrator will not add to, subtract from, change or modify any provisions of this agreement.

M. All arbitration awards will remain subject to the filing of "exceptions" in accordance with Federal Labor Relations Authority (FLRA) procedures in effect at the time of the arbitration.

**Section 4 -Transcripts**

A. All fees and expenses of the arbitrator will be shared equally by the Parties. If either party requests a verbatim transcript in matters covered under Sections 2302(b) (1), 4303 or 7512 of Title 5, U.S.C., the cost of the court reporter and the official transcript will be paid by the requesting party.

B. The cost of arbitration expenses for threshold or enforcement issues will be paid equally by both Parties.

## ARTICLE 10 HOURS OF WORK AND OVERTIME

### Purpose

This article shall be administered in accordance with Title 5, U.S.C., Chapters 61, Title 5, CFR, and this agreement. The purpose of this article is to prescribe the policies covering hours of work for all employees in accordance with applicable law and regulation.

### Definitions

A Tour of Duty is the hours of a day and the days of a workweek that constitute an employee's regularly scheduled workweek (e.g., Monday-Friday, 8:00 a.m.-4:30 p.m.). Under an Alternate Work Schedule (AWS) or other fixed schedule, "Tour of Duty" is synonymous with "basic work requirement."

### Maxiflex

A type of flexible work schedule that contains core hours on fewer than ten (10) workdays in the biweekly pay period and in which a full-time employee has a basic work requirement of eighty (80) hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established for the organization.

### Alternative work schedules (AWS)

Both flexible work schedules and compressed work schedules.

### Compressed work schedule (CWS)

1. in the case of a full-time employee, an eighty (80)-hour biweekly basic work requirement that is scheduled by an Agency for less than ten (10) workdays; and
2. in the case of a part-time employee, a biweekly basic work requirement of less than eighty (80) hours that is scheduled by an Agency for less than ten (10) workdays and that may require the employee to work more than eight (8) hours in a day. (See 5 U.S.C. 6121(5).)

### Flexible work schedule (FWS):

A work schedule established under 5 U.S.C., 6122, that-

1. in the case of a full-time employee, has an eighty (80)-hour biweekly basic work requirement that allows an employee to determine his or her own schedule within the limits set by the Agency; and
2. in the case of a part-time employee, has a biweekly basic work requirement of less than eighty (80) hours that allows an employee to determine his or her own schedule within the limits set by the Agency.

## Gliding

A type of flexible work schedule in which a full-time employee has a basic work requirement of eight (8) hours in each day and forty (40) hours in each week, may select a starting and stopping time each day, and may change starting and stopping times daily within the established flexible hours.

## Variable day schedule

A type of flexible work schedule containing core hours on each workday in the week and in which a full-time employee has a basic work requirement of forty (40) hours in each week of the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday within the week within the limits established for the organization.

### **Section 1 - General Provisions/Definitions**

- A. Normally, location operational hours will be 6:00 a.m. to 6:00 p.m., Monday – Friday.
- B. Core hours are the hours when the location expects maximum attendance and will be established by each location allowing for flexibility of arrival and exit times for employees.
- C. Core hours are the time periods during the workday, workweek or pay period that are within the tour of duty during which an employee covered by a FWS is required to be present for work.
- D. Location management will establish core hours during which the Agency expects maximum attendance allowing for flexibility of arrival and exit times for employees.
- E. The workweek will be a period of seven (7) consecutive calendar days beginning on Sunday.
- F. This subsection is not intended to preclude regular Saturday/Sunday scheduling for certain functions that require seven (7)-day-a-week operations.
- G. Normally, an employee's workweek shall not extend over more than five (5) days of the period Sunday through Saturday.
- H. Whenever possible, the basic work requirement will be Monday through Friday, and the two (2) days off per week will be consecutive and preferably on Saturday and Sunday.
- I. Basic work requirement means the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, and compensatory time. For full-time employees, the basic work requirement is eighty (80) hours per biweekly pay period. A part-time employee's basic work requirement is the number of hours the employee is scheduled to work in a biweekly pay period.

J. Start time begins when the employee reaches their assigned work area (e.g., the locker room may be an assigned work area when a change of uniform is required). End time is when the employee leaves their assigned work area.

### **Section 2 - Change of Uniform**

When a change of uniform is required, the Agency will provide ten (10) minutes at the beginning and ending of the tour of duty for the employees to change clothes.

### **Section 3 - Notification of Schedules**

Notice of management-directed changes in an employee's master schedule to meet programmatic needs will be provided to the Union. Normally, the notification will occur two (2) pay periods in advance of the change. The Union will notify the Agency if it demands to bargain regarding such change.

### **Section 4 - Meal Periods**

A. All employees are required to take a non-paid meal period of at least thirty (30) minutes, scheduled at or near the mid-point of the shift or tour of duty.

B. A meal period is not required for scheduled work periods of less than seven (7) hours per day.

C. The meal period may not be the first or last thirty (30) minutes of your scheduled shift.

### **Section 5 - Breaks**

A. Normally, a break of fifteen (15) minutes will be provided for each four (4)-hours of work for employees who work an eight (8)-hour tour of duty. The break period will normally occur in the middle of each four (4)-hour work period. Employees who work four (4)-hour shifts will have no more than one (1) break period. Similar adjustments will be made for employees who work on other than the normal eight (8)-hour tour of duty.

B. Breaks are hours of duty and may not be accumulated for later use. Breaks may not be used to begin or end the workday or extend the meal period.

C. Smoke breaks will be considered part of the break periods during the employee's tour of duty.

### **Section 6- Alternate Work Schedules (AWS)**

A. An employee may request a flexible work schedule (FWS) by submitting a written request to their first line supervisor. All written requests will be subject to supervisory approval/disapproval in accordance with 5 U.S.C., 6131 and within thirty (30) calendar days of receipt of the request.

B. Possible Compressed Work Schedules (CWS) options may be, but not limited to 5/4/9 or 4-10:

1. 5/4/9 schedule is a work schedule in which a full-time employee works eight, 9-hour days and one, 8-hour day for a total of eighty (80) hours in a biweekly pay period.

2. 4-10 schedule is a work schedule in which a full time employee must work 10 hours a day, forty (40) hours a week and eighty (80) hours a biweekly pay period.

C. For additional guidance refer to the following authorities:

1. 5 U.S.C., 6120-612
2. 5 U.S.C., 6129-6133
3. 5 U.S.C., 6121
4. 5 CFR, part 610

### **Section 7 -Denial, Suspension and Termination of Flexible Work Schedules (FWS)**

#### **Denials of FWS:**

A. When a supervisor denies a request for an FWS, he or she will:

1. notify the employee in writing of the basis for the denial;
2. if appropriate, provide an alternate schedule to the employee; and
3. notify the Union of the denial.

B. The supervisor may deny an employee's request for an FWS if that particular schedule would have an adverse impact on the Agency (including a local work unit). Adverse Agency impact is defined as:

1. A reduction of the productivity of the Agency;
2. A diminished level of services furnished to the public by the Agency; or
3. An increase in the cost of Agency operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule).

#### **Suspension of an FWS:**

A. FWSs may be suspended as a result of emergencies and incident responses, and unusual workload or operational demands. Management and/or the supervisor will normally provide advance notice of at least one (1) pay period for non-emergencies. Management and/or the supervisor will notify the Union of suspensions for emergency or incident responses as soon as practical. Efforts will be made to limit suspensions to as short a time frame as necessary to meet the workload or operational requirements, and restore FWSs as soon as possible.

B. Upon request an employee will be provided written justification when the supervisor alters the employee's established FWS.

**Termination of FWS:**

A. If an FWS has already been established and management determines that the schedule is having an "adverse Agency impact" on a management unit and/or location, management will notify the Union. The Parties will attempt to resolve the issue and promptly determine whether to continue the schedule.

B. If resolution cannot be reached the Parties will jointly present the issue to the Federal Services Impasse Panel (FSIP). The decision issued by FSIP is binding.

C. The basis for the decision will be based on demonstrating:

1. A reduction of the productivity of the Agency;
2. A diminished level of services furnished to the public by the Agency; or
3. An increase in the cost of Agency operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule).

D. A schedule change will not occur until a decision has been issued by FSIP.

E. An employee's FWS may be suspended and/or discontinued due to performance and/or conduct issues. There must be a nexus between the flexible schedule and the performance and/or conduct for an employee's flexible schedule to be discontinued.

**Section 8 - Credit Hours**

A. With supervisory approval, eligible employees (e.g., an employee that has an appointment of under ninety (90) days is not eligible) may earn credit hours, provided there is work available and may use credit hours in accordance with regulation and Agency directive(s).

B. The approval or denial of credit hours will be subject to the same criteria as annual or sick leave. Credit hours must be earned before they may be used. Credit hours may be earned and used within the same pay period.

C. The Parties recognize that the law requires employees to forfeit credit hours above the twenty-four (24) hours they are allowed to carry over from one (1) pay period to the next; therefore, to avoid forfeiture of credit hours, the employee and the supervisor are strongly encouraged to work together when planning work schedules.

**Section 9 -General Overtime Provisions**

A. Overtime will be first offered to qualified volunteers. If there are no volunteers, the supervisor or their designee will assign the overtime based on the nature of the work and qualifications necessary to perform the work.

- B. When an employee works overtime, such overtime will be paid in increments of ¼ hour.
- C. Employees shall be paid differential and premium pay in addition to the overtime compensation in accordance with applicable regulations.
- D. It is agreed that non-BUEs shall not be scheduled for overtime to perform the duties of employees for the sole purpose of eliminating the need to schedule employees for overtime.
- E. Management shall make a reasonable effort to give the employee as much notice as possible when planned overtime is required, and further, will give due consideration to the employee's personal circumstances.
- F. At the request of an employee, the supervisor or designee may grant compensatory time in lieu of overtime pay, whether such overtime hours are regularly scheduled or irregular or occasional in nature. If the employee does not request compensatory time in lieu of overtime pay, or if the employee's request for compensatory time in lieu of overtime pay is not granted, the employee shall be compensated for such overtime under the applicable statutory provisions.
- H. In accordance with regulations, supervisors will not require employees to earn compensatory time in lieu of overtime pay.
- I. The Agency shall, to the extent practicable, permit employees to use their compensatory time at the earliest time convenient to them within twenty-six (26) pay periods.
- J. Normally, compensatory time off shall be granted before annual leave is approved. If annual leave would otherwise be forfeited, the annual leave shall be granted before compensatory time. Any employee who is unable to use compensatory time within twenty-six (26) pay periods shall receive overtime pay instead. However, earned compensatory time off for travel will be forfeited if not used within 26 pay periods in accordance with OPM regulations.
- K. Employees who are called back to work for a period of overtime unconnected to their regularly scheduled tour of duty are entitled to a minimum of two (2) hours overtime pay. This does not preclude employees from being called in for non-emergency situations.
- L. Employees directed by their supervisor to work through their non-paid meal period shall be compensated for such time.

#### **Section 10 - Glide Time**

Unit employees will have the option to work on a maxiflex schedule and use glide time, subject to workload requirements. Glide time is that part of the maxiflex schedule of working hours during which employees may vary their time of arrival and departure from their work site on a daily basis without prior notification to the supervisor, within limits consistent with the duties and requirements of the position.

#### **Section 11 - Resolving Disagreements Related to Work Schedules**

A. In order to resolve disagreements at the lowest level possible, the employee shall make a good faith effort to meet with their immediate supervisor or their designee. If resolution is not reached, the employee may request a meeting with their second level supervisor or their designee.



B. Meetings should be held at dates and times by mutual agreement. The employee may request Union representation at any time during attempts to reach resolution.

C. Exercising this option does not negate the employee's right to file a grievance. The Parties agree to hold grievance timelines in abeyance while working through this informal process.

**Section 12 - Master Schedules**

A. The purpose of the master schedule is to have a written record of the employee's regular scheduled tour of duty for safety matters, to ensure proper pay practice, and to coordinate work effort to meet mission goals.

B. A recorded tour of duty on a master schedule does not preclude the use of glide time or flex time.

C. The supervisor will insure that the scheduling of master schedules is fair and equitable for the employees that they supervise.

D. Supervisors retain the authority to restrict individual schedules for business reasons and to accomplish the research in an effective, efficient manner.

E. An employee may elect a tour of duty that will allow the normally scheduled shift to start and be completed within normal location hours of 6:00 a.m.-6:00 p.m.

F. Employees may elect to change their master schedules every pay period.

G. The master schedule requires approval by the immediate supervisor or designee.

## **ARTICLE 11 LEAVE**

### **Section 1 - General**

- A. Employees will accrue and use sick and annual leave in accordance with applicable statutes and OPM regulations. When not specified otherwise, Agency directives and policies will be followed.
- B. All leave charges shall be in increments of 1/4 hour.
- C. Employees should make requests for leave as far in advance as practical to their immediate supervisor or their designee.
- D. Leave may be requested any time and will only be denied for valid operational needs.
- E. The Agency may exercise flexibility of work scheduling or numbers of required employees on duty to accommodate an employee's need for emergency or unscheduled leave.
- F. Leave will be administered in a fair and equitable manner.

### **Section 2 - Leave Earnings**

- A. Full-time and part-time employees earn leave during each full bi-weekly pay period while in a pay status or in a combination of a pay status and a non-pay status in accordance with 5 CFR, Part 630, Absence and Leave.
- B. A full-time employee in a Leave Without Pay (LWOP) status who reaches an increment of eighty (80) hours of unpaid leave will not accrue leave within that pay period. The running total of eighty (80) hours will reset each year on pay period one (1).

### **Section 3 - Annual Leave**

- A. Annual leave is provided to allow employees extended leave for rest and recreation and to provide periods of time off for personal and emergency purposes.
- B. The use of accrued annual leave is a right of the employee, subject to the right of the employer to approve when leave may be taken.
- C. Normally, the supervisor or designee will reply to the request for leave in a timely fashion. The employee will be responsible for ensuring that leave is recorded in their time and attendance record.
- D. Location management will identify the responsible management official who will be accountable for updating the process for requesting leave (including but not limited to unplanned leave) and distributing it to all employees on an annual basis.

E. Management will only cancel approved leave for compelling employer need. Should management cancel leave, the employee will be advised of the cancellation (with rationale) as far in advance as practical.

F. Restored leave will be addressed in accordance with applicable policies and regulations.

G. Employees are advised that the proper leave-approving official is their immediate supervisor or designee.

#### **Section 4 - Unanticipated Annual Leave**

A. If the need for leave cannot be anticipated, the employee shall, as soon as practicable, contact the immediate supervisor or their designee to request approval of unscheduled leave. The employee will follow established work unit notification procedures in the event the immediate supervisor or their designee is not available.

B. If an emergency arises during the employee's duty day, the employee will request leave and obtain approval from his/her immediate supervisor, or designee, before leaving the work site.

C. Employees who fail to follow leave request procedures as required above may be charged Absent without Leave (AWOL).

#### **Section 5 - Annual Leave for Union Representatives**

An employee who is a steward or other Union official will be granted annual leave or LWOP to attend internal Union functions, during the employee's regular tour of duty, which are not covered by Official Time and Duty Time as set forth in Article 28. Normally, an advanced notice of ten (10) work days will be required and will be approved subject to workload considerations.

#### **Section 6 - Sick Leave**

A. Employees are entitled to use sick leave, in accordance with 5 CFR, 630.401, when they:

1. Receive medical, dental, or optical examination or treatment; or
2. Are incapacitated for the performance of duties by sickness, injury, pregnancy, or confinement; or
3. Are required to give care and attendance to an immediate family member who is incapacitated due to a medical or mental health condition.
4. Make arrangements necessitated by the death of a family member or attends the funeral of a family member.
5. Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease.

6. Must be absent from duty for purposes relating to his or her adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

B. It is the responsibility of an employee who is incapacitated and /or unable to perform their assigned work duties to notify the immediate supervisor or their designee (or to have any responsible person make the notification for the employee) as soon as possible.

C. Location management will establish notification procedures for calling in sick. The procedures will be distributed by management on an annual basis.

D. An employee who expects to be absent for more than one (1) day will inform the supervisor or their designee of the expected date of return to duty and will notify the supervisor of any change. In the case of extended illness, of more than three (3) consecutive work days, daily reports will not be required.

E. Employees may request temporary modification of their work station or duties for periods as defined in the medical documentation that has been provided. The medical documentation will identify specific restrictions that preclude them from performing full regular duty assignments. Supervisors may provide appropriate limited duty assignments if they are available.

#### **Section 7 - Documentation for Sick Leave**

A. Employees may be required to furnish administratively acceptable evidence to substantiate a request for approval of sick leave if the sick leave exceeds three (3) consecutive workdays. Exceptions may be made on a case-by-case basis.

B. An employee requesting annual leave, sick leave, or LWOP for periods of illness of more than three (3) consecutive workdays must make an appropriate request and may be required to furnish evidence of the need for sick leave upon return to duty. The Agency may place the employee on AWOL pending receipt of the medical certification.

C. An employee may justify the request for sick leave:

1. By medical documentation from the employee's personal physician or health care professional, or
2. For employees who have approved FMLA: An employee with a chronic medical condition that does not require medical treatment but does result in periodic absences from work will not be required to furnish a physician's certificate on a continuing basis if the employee: (1) is absent 3 days or less, (2) is not on leave restriction and (3) provides, if requested, an updated valid medical certificate not more frequently than every thirty (30) days but at least annually which clearly states the continuing need for the periodic absences.

3. Medical documentation must include a statement that the employee was incapacitated for work and date(s) of incapacitation. This will be considered sufficient for medical documentation purposes. This applies to both sick leave of more than three (3) days and documentation for sick leave restriction(s).

D. Documents regarding employee absence for sick leave purposes are highly sensitive. The supervisor will ensure that they are maintained in a secure and confidential manner.

### **Section 8 - Sick Leave Restriction**

Where there is reason to believe that an employee is abusing the sick leave entitlement, the following will apply:

1. The employee shall be formally counseled (provided with written documentation) and advised of the possibility of future medical certification requirements or other actions should the abuse continue. This does not preclude the supervisor from discussing perceived abuse of sick leave.
2. If the abuse continues, the employee may be required to furnish a medical certification for each sick leave application.
3. During the course of the leave restriction, typically a ninety (90) day period, and upon serving at least 50% of the time on the restriction, the employee may once per calendar month, request the supervisor evaluate and consider holding in abeyance the remainder of the time to be served on the leave restriction.
4. If the employee fails to maintain the desired improvement during the course of the original time period specified in the leave restriction letter, the supervisor will reinstate the leave restriction letter with an adjusted end date. If the letter of leave restriction is reinstated, there will be no further review during the life of the letter.
5. Sick leave restriction documentation does not become part of the employee's eOPF.

### **Section 9 - Advanced Sick/Annual Leave**

A. Employees who are incapacitated for the performance of duties because of serious health condition, disability, or ailment may request advance sick leave not to exceed two hundred forty (240) hours. Two hundred forty (240) hours of sick leave is the maximum number of hours that may be advanced to an employee with a medical emergency related to the adoption of a child, for family care or to care for a family member with a serious health condition. Sick leave will not be advanced just because an employee has exhausted his/her sick leave. The advancement of sick leave is at the discretion of the supervisor.

B. In accordance with policy, (P&P 402.1, Flexible Work Schedules, and its successor), credit hours may be used to liquidate advanced annual or advanced sick leave.

C. Requests for advanced sick leave will be considered in accordance with governing regulations and for periods of absence that will be for more than three (3) consecutive days when all of the following conditions are met:

1. The employee is eligible to earn sick leave;
2. The employee's request does not exceed two hundred forty (240) hours, or for temporary employees only the amount to be earned during the period of temporary employment if appropriate;
3. There is no reason to believe the employee will not return to work after having used the leave;
4. The employee has provided acceptable medical documentation of the need for advanced sick leave.

**Section 10 - Advance Annual Leave**

A. An employee with an appointment of greater than ninety (90) days or longer, and who is not intermittent may be advanced annual leave in accordance with their employment appointment and leave will accrue up to the end of the leave year. However, advanced annual leave may not be granted to a temporary employee beyond the date set for the expiration of the employee's temporary appointment or to any employee if there is a likelihood that the employee will retire, be separated, or resign from the Agency before the date the employee will have earned the leave. Upon separation, employees must repay the balance of any remaining advanced annual and sick leave, unless resigning due to exceptions, as listed in regulation or:

1. Death;
2. Disability retirement;
3. Entrance into military service with reemployment rights; or
4. Resignation or separation because of disability which, according to medical certification, prevents the employee from return to or continuing employment.

B. Advanced sick leave may be combined with annual leave when necessary to cover one continuous period of absence.

C. It is agreed that advance leave, including both sick and annual, will be fairly and equitably administered on a case-by-case basis.

D. Denials of requests for advanced leave must be conveyed to the employee promptly and must contain a specific explanation of the reasons for the denial.

E. The employee will be required to pay back the advanced leave in accordance with current and subsequent regulation, Departmental and Agency policies.

**Section 11 - Leave for Family Purposes**

**A. Family and Medical Leave Act (FMLA)**

The Agency will adhere to the Government-wide regulations for FMLA.

**1. Maternity and Paternity Leave**

a. Under the Family Medical Leave Act, bargaining unit employees are entitled to twelve (12) weeks of LWOP during any twelve (12) month period for the following reasons:

- i. Birth of a son or daughter and the care of such son or daughter, and
- ii. Placement of a son or daughter for adoption or foster care.

**2. Other Family Leave**

Under the Family Medical Leave Act (FMLA), bargaining unit employees are entitled to twelve (12) weeks of LWOP during any twelve (12) month period for one or more of the following reasons:

- a. The care of a family member of the employee with a serious health condition. Family member is defined as:
  - i. Spouse, and
  - ii. Sons and daughters,
  - iii. Parents of the employee
- b. A serious health condition of the employee that makes the employee unable to perform the functions of the position of such employee.
- c. Any qualifying exigency arising out of the fact the employee's spouse, son, daughter, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

Note: The employee may elect to substitute annual leave and/or sick leave for unpaid family or medical leave for any part of the applicable period consistent with governing laws and regulations. Employees may also combine annual leave and/or sick leave with unpaid family or medical leave for any period of approved leave. An employee may not retroactively substitute paid time off for unpaid family and medical leave.

## B. Family Friendly Leave (FFL)

Under 5 C.F.R. §630.401, employees are entitled to use sick leave to provide care for:

1. Spouse, and parents thereof;
2. Children including adopted children, and spouses thereof;
3. Parents, and spouses thereof;
4. Brothers, sisters, and spouses thereof;
5. Grandparents and grandchildren, and spouses thereof;
6. Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; and,
7. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

## C. Notice of Leave

1. The employee will make an appropriate request for use of FMLA and/or FFL in accordance with Government wide regulation.
2. When the need for unpaid FMLA is foreseeable and the employee fails to give thirty (30) day notice with no reasonable excuse for the delay of notification, the Agency may delay the taking of family and medical unpaid leave until at least thirty (30) days after the date the employee provides notice of his/her need for family and medical leave.

## D. Medical Certification

An employee shall provide written medical certification to the Agency in a timely manner.

The written medical certification shall include:

1. The date the serious health condition commenced.
2. The probable duration of the serious health condition.
3. The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition including a statement as to the incapacitation, examination, or treatment, and likely duration of condition, may be required.



4. A statement that the employee is unable to perform the functions of his/her position.

The Agency shall not require any personal or confidential information in the written medical certification other than what is required by regulation.

If the Agency doubts the validity of medical records it can require a second and third (and final) opinion at the Agency's expense (5 U.S.C., 6383).

E. "Health Care Provider" is defined as any of the following individuals:

1. A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this subpart;
2. Any health care provider recognized by the Federal Employees Health Benefits Program or who is licensed or certified under Federal or State law to provide the service in question;
3. A health care provider as defined in paragraph (2) of this definition who practices in a country other than the United States, who is authorized to practice in accordance with the laws of that country, and who is performing within the scope of his or her practice as defined under such law;
4. A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or
5. A Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders who practices traditional healing methods as believed, expressed, and exercised in Indian religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, consistent with Public Law 95-314, August 11, 1978 (92 Stat. 469), as amended by Public Law 103-344, October 6, 1994 (108 Stat. 3125).

If the employee is unable to provide the requested medical certification before leave begins or the Agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the Agency shall grant provisional leave pending final written medical certification.

F. Medical Recertification.

The employee may be required to provide an updated certification during the leave period under FMLA,

1. If the medical condition(s) has changed, or
2. The leave is not consistent with the information provided on the medical documentation.

The Agency may require subsequent medical recertification in accordance with law, statute or government-wide regulation.

An employee eligible under the Agency's Family Medical Leave Program may request to participate in the Telework Program.

### **Section 12 – Protection of Employment and Benefits**

A. Upon return from FMLA, the employee will be restored to the same position as occupied before the leave or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

B. When an employee requests leave under the Agency's Family Medical Leave Program, the Agency will provide guidance concerning the employee's rights and obligations under the program.

C. Under FMLA, an employee who meets the criteria for leave and has complied with the requirements under this section may not be denied leave, consistent with all applicable rules governing annual leave, sick leave, or LWOP as appropriate.

D. An employee enrolled in a health benefits plan, who is placed in a LWOP status may continue his or her health benefits enrollment while in the LWOP status, but is responsible to arrange through the appropriate channels to pay the contributions into the Employees Health Benefits Fund. The Employer will continue to pay their portion of health and life insurance, if applicable, according to legal and regulatory requirements.

### **Section 13 - Employee Absences for Court or Court-Related Services**

A. Except as otherwise modified by applicable law, government-wide regulations or other outside authority binding on the Agency, an employee summoned or subpoenaed in connection with a judicial proceeding by a court or other authority responsible for the conduct of that proceeding shall be authorized to attend the judicial proceeding without charge to leave or loss of employee salary in the following instances:

1. For jury duty.
2. To appear as a witness on behalf of the Federal, District of Columbia, state, or local government.
3. To appear as a witness on behalf of a private party in an official and job-related capacity or to produce official records.
4. "Expense money" may be retained by the employee; "fees for services rendered" must be submitted to the appropriate financial office.
5. It is agreed that days off and/or schedules will not be changed to avoid granting absence for court or court-related services.

B. An employee who is granted court leave and is excused or released by the court for any day or substantial portion of a day is expected to return to the employee's regular duties except when:

1. Only a small portion of the work day would be involved and thus no appreciable amount of service would be rendered.
2. The distance from the court to the place of duty is such that this would be an unreasonable requirement.
3. The regular tour of duty occurs at night.

**Section 14 - Leave Without Pay (LWOP)**

A. LWOP may be requested and considered for approval in the same manner and for the same purposes as annual leave and sick leave.

B. Employees may request LWOP for educational purposes.

C. LWOP is granted at the discretion of management. Management does not have the discretion to deny leave in the following cases:

1. When a disabled veteran requests LWOP for medical treatment;
2. When requested by a reservist or National Guard member for military duties in accordance with appropriate military orders. Employees may request such leave after their military leave has been exhausted (38 U.S.C., Section 4316(d));
3. When requested by an employee who has suffered an incapacitating job-related injury or illness and is waiting adjudication of a claim for employee compensation by the Office of Workers' Compensation Program; or
4. When an employee makes a request under the Family and Medical Leave Act and meets the criteria for that program.

D. Upon written request from the appropriate Union office, an employee may be granted LWOP to engage in Union activities on the national, district or local level, to work in programs sponsored by the Union or the AFL-CIO. Such requests will be referred to the appropriate management official. Such employees shall continue to accrue benefits in accordance with applicable OPM regulations. LWOP for this purpose is limited to one (1) year but may be extended or renewed upon proper application.

E. Upon return to duty after a period of LWOP, management will restore the employee to a similar position at the same grade and pay.

**Section 15 - Religious Compensatory Time**

A. An employee whose personal religious beliefs require abstention from work during certain periods of time may elect to engage in credit or compensatory time work to compensate for time lost for meeting those religious requirements.

B. To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the Agency's mission, the Agency shall in each instance, afford the employee the opportunity to work compensatory time. The Agency shall in each instance grant compensatory time off to an employee requesting such time off for a specific religious observances and when the employee's personal religious beliefs require that the employee abstain from work.

C. For the purpose stated in paragraph B of this section, the employee may work such compensatory time before or after the granting of compensatory time off. Advanced compensatory time off should be repaid with the appropriate amount of compensatory overtime work within a reasonable amount of time, not to exceed the end of the leave year. Compensatory time shall be credited on an hour-for-hour basis or authorized fractions thereof. Appropriate records will be kept of compensatory time earned and used.

D. If the employee is separated or transferred before using the time set aside for a religious observance any hours not used must be paid at the employee's rate of basic pay in effect when the extra hours of work were performed. Any religious compensatory time used and not repaid will be charged to the employee at the same rate.

**Section 16 - Military Leave**

A. In accordance with law and regulations, full-time permanent and part-time permanent employees who are members of the National Guard or the Armed Forces Reserves are entitled to fifteen (15) calendar days of regular military leave in a fiscal year for active duty or active duty for training.

B. For part-time employees, military leave is prorated based on the number of hours in the employee's work week.

C. Employees who do not use the entire fifteen (15) days can carry any unused military leave (not to exceed fifteen (15) days) over to the next fiscal year. Military leave may never exceed thirty (30) days in any one (1) calendar year.

D. Regular military leave is charged in increments of one (1) hour. Non-workdays falling at the beginning or end of military leave are not included in the period of military leave.

E. Management will take into consideration the schedules of employees who work off-tours and will, when possible, arrange schedules to allow such employees to have scheduled days off immediately preceding and following the required military leave.

### **Section 17 - Voluntary Leave Transfer Program**

A. The Agency will continue to use the Leave Transfer Program as designated in the current Agency Directives and Policies and as authorized by 5 CFR, 630 Subpart I.

B. Employees are entitled to donate and receive leave for medical emergencies. By reference, the definitions, eligibility criteria and administrative provisions pertaining to a Voluntary Leave Transfer Program contained in 5 CFR, 630 Subpart I are incorporated into this agreement.

### **Section 18 - Leave for Bereavement**

A. Upon request, subject to any documentation requirements, leave-approving officials shall approve sick leave for employees to mourn the death of the following family members:

1. Spouse, and parents thereof;
2. Children including adopted children, and spouses thereof;
3. Parents, and spouses thereof;
4. Brothers, sisters, and spouses thereof;
5. Grandparents and grandchildren, and spouses thereof;
6. Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; and,
7. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

B. Additional leave (annual leave, and/or LWOP) can be requested for family care and bereavement needs not covered by sick leave.

C. The supervisor has discretion to require documentation (e.g., obituary, death certificate) prior to final approval of bereavement leave. However, this documentation will normally be required only in unusual circumstances.

### **Section 19 - Administrative Leave**

A. Administrative leave is absence from assigned duties without charge to leave or loss of pay. The Parties agree that excused absence may be granted for activities which are in the government's interest. The employee will be required to have supervisory approval prior to leaving or being absent from the work place.

B. Employees will be granted up to four (4) hours of administrative leave to donate blood. Time spent donating blood and in necessary travel for such purposes shall also be administrative leave.

C. When a donor is paid for donating blood by the blood collecting organization, the employee is required to take some type of leave (other than sick leave) for any period of absence resulting from the blood donation.

D. Upon request, subject to certification by a physician, leave-approving officials shall approve administrative leave for employees who serve as living donors for bone marrow, organ, and tissue donation and transplantation. The use of administrative leave can cover time off for activities such as donor screening, the actual medical procedure, and recovery time. Leave-approving officials shall approve:

1. Employees may use up to seven (7) days of paid leave each calendar year, in addition to annual and sick leave, to serve as a living bone marrow donor,
2. Employees may use up to thirty (30) days of paid leave each year, in addition to annual and sick leave, to serve as an organ donor.

E. The Parties agree that the above reasons for granting administrative leave are not all inclusive and that there may be other situations supporting a request for the granting of such leave. Such requests shall be considered based on the reasons presented at the time. The employer may require documentation as appropriate to support the reasons for and/or the duration of such administrative leave requests.

F. Any changes in policy will be subject to Union notification and negotiations as required.

**ARTICLE 12**  
**POSITION DESCRIPTIONS (PDs)**

**Section 1 - General**

- A. Each position covered by this agreement that is established or changed must be accurately described in writing and classified to the proper occupational title, series, bargaining unit status code, and grade.
- B. All PDs must clearly and concisely state the major and significant duties, responsibilities, and supervisory relationships of the position.
- C. Employees will have access to a current, accurate copy of their PD (e.g., eOPF).
- D. PDs will be kept current and accurate, and positions will be classified properly. Management-directed changes to a PD will be incorporated in the PD to assure that the position is correctly classified/graded to the proper title, series, and grade. Incidental changes may be made in the form of pen and ink notations on the PD. The Union will be provided copies of, or access to, updated or current PDs upon request.
- E. In accordance with regulation, the Agency has the right to assign work that is not in the PD; however, the work needs to be related to the employee's current official position of record. If that work occurs on a regular and reoccurring basis, the PD must be revised to accurately reflect the job duties.
- F. Employees dissatisfied with the classification of their positions should first discuss the problem with their supervisors. If a supervisor is unable to resolve the issue to the employee's satisfaction, the employee can discuss the matter with the local Human Resources staff member who will explain the basis for the classification/job grading.
- G. Upon request, the Union will have access to the evaluation report, if available, organizational and functional charts, and other pertinent information directly related to the classification of the position. This informal classification review process should be completed in a reasonable period of time. If the employee is unsatisfied with the outcome of the informal review, the employee may ask the supervisor to forward a request for a desk audit to the Agency.
- H. If/when a desk audit is conducted, the desk audit will normally be completed in ninety (90) days from the employee's request. This time frame may be extended by mutual agreement.
- I. If the employee still believes there is an inequity, an appeal may be filed with the Agency and/or OPM as appropriate. An employee may file a classification/job grading appeal at any time through appropriate channels whether or not this informal classification review process was followed.

J. Vacant positions will not be posted until the appointing authority assures that they are authorized, properly described, evaluated, and classified according to series, title, and grade.

K. No position(s) will be downgraded without a thorough review. For a downgraded position, the employee's pay and grade will be maintained on an incumbent basis in accordance with law and regulations.

### **Section 2 -Classification Standards**

A. The Agency will apply newly issued OPM classification and job grading standards within a reasonable period of time, or as prescribed by OPM. The Union will be provided with copies of new standards that are implemented at the local level. Current classification standards are available on the OPM website. Management will meet and confer with the Union on procedures pertaining to mandated systematic position classification and special maintenance reviews.

B. Upon request, the Agency will make available to the Union copies of any Agency guidance provided by OPM in connection with any classification standards.

### **Section 3 -Classification Appeals**

A. Upon request, the Agency will make available information to employees and the Union regarding procedures for filing classification appeals through the Agency or OPM.

B. Employees or their Union representatives may submit their written classification/job grading appeals through the designated HR staff. The HR staff will forward the complete appeal to the Agency or OPM as appropriate normally no later than fifteen (15) business days from receipt and will provide the Union with two (2) copies of the employee's appeal request. However, this does not preclude an employee from filing a classification/job grading appeal directly to the Agency or OPM as appropriate. Timelines may be extended by mutual agreement.

C. General Schedule and Federal Wage System employees who file written appeals with the Agency or OPM concerning the title, series and grade, and/or coverage of their position will have their appeal decided within a reasonable period of time from the date the Appeals Office receives a completed application. Classification appeal decisions will be forwarded through the ARS Labor Relations Department to the Union.

### **Section 4 -Effective Date**

The effective date of a personnel action taken as a result of an appeal should be in accordance with the directions provided by the Agency or OPM decision, normally no later than the beginning of the fourth pay period following the date of the decision.



## **ARTICLE 13 MERIT PROMOTION**

### **Section 1 - Purpose**

The Parties agree that merit promotion principles are applied in a consistent manner, with equity to all employees, and without regard to political, religious, or labor organization affiliation or nonaffiliation, genetic information (including family medical history), marital status, race, color, sex (including pregnancy and gender identity), national origin, disabling condition, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), or sexual orientation, status as a parent, or any other non-merit-based factor, unless specifically designated by statute as a factor that must be taken into consideration when awarding such benefits, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available, and shall be based solely on job-related criteria.

### **Section 2 - Actions Covered by Competitive Procedures**

In accordance with 5 CFR, 335.103, competitive procedures will apply to the following types of personnel actions subject to the exceptions explained in Section 3:

1. Promotions,
2. Temporary promotions for more than one hundred twenty (120) calendar days,
3. Details over one hundred twenty (120) calendar days to higher graded positions or to positions with known promotion potential,
4. Selection for training which is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for a promotion as specified in 5 CFR, 410.302.
5. Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in competitive service. Exceptions are actions permitted by reduction-in-force regulations,
6. Transfer to a higher-grade position or with more promotion potential than a position previously held on a permanent basis in the competitive service,
7. Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a previously held on a permanent basis in competitive service.

### **Section 3 - Actions Not Covered by Competitive Procedures**

In accordance with 5 CFR, 335.104, competitive procedures will not apply to the following personnel actions which are exceptions to Section 2 above:

1. Career Ladder Promotions: Career ladder promotions are permitted when an employee is appointed or assigned to any grade level below the established full performance level of the position (i.e., the position has a documented career ladder and promotion potential). These promotions may be made non-competitively for any employee who entered the career ladder by:

- a. Competitive procedures;
- b. Competitive appointment from a certificate of eligibles (through OPM or delegated examining authority);
- c. Non-competitive appointment under special authority; such as conversion of Pathways Program or similar program(s), appointment of former ACTION Volunteers or Peace Corps volunteers, conversion of a Veterans Recruitment Authority (VRA) appointee and Presidential Management Fellows.

2. Promotion Based on Reclassification when:

- a. No significant change occurs in the duties or responsibilities of the position and the position is upgraded due to issuance of a new classification standard, or the correction of a classification error; or
- b. The position is upgraded due to accretion of additional duties and responsibilities and the following provisions are met:
  - i. The duties of the former position are absorbed into the new position
  - ii. The new position has no promotion potential;
  - iii. The additional duties and responsibilities assigned or accrued by the incumbent do not adversely affect or impact other positions in the organizational unit;
  - iv. The new position is not a reclassification from nonsupervisory to supervisory status; and
  - v. The accretion is supported by a written analysis of the position which may involve a position review including written, face-to-face, and/or telephonic reviews with the employee and/or the employee's supervisor, or other fact gathering method.

3. Permanent Promotion: to a position held under a temporary promotion when:
  - a. The assignment was originally made under competitive procedures;
  - b. It was known to all competitors at the time of original appointment that the assignment may lead to a permanent position.
  
4. Temporary Promotion:
  - a. Of an employee for less than one hundred twenty (120) calendar days;
  - b. promotion for more than one hundred twenty (120) calendar days to a grade level previously held on a permanent basis, unless the employee was demoted for reason related to performance or misconduct.
  
5. Placement as a Result of Priority Consideration: when the referral is a remedy for candidates not given proper consideration in a competitive promotion action.
  
6. Reduction in Force Placements: which result in an employee receiving a position with higher promotion potential will not occur unless an employee currently holds or previously held the higher grade on a permanent basis in the competitive service.
  
7. Promotion to a Grade Previously Held: on a permanent basis in the competitive service, from which the employee was separated or demoted for other than performance or conduct reasons and not at the employee's request.
  
8. Promotion, Reassignment, Demotion, Transfer, Reinstatement, or Detail to a Position Having Promotion Potential: no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement approved under 5 CFR, 6.7 and did not lose because of performance or conduct reasons.
  
9. Promotion as a Legal Remedy: as ordered and agreed upon in a legal or administrative proceeding.
  
10. Details: for one hundred twenty (120) calendar days or less to a higher graded position or to a position with known promotion potential.

#### **Section 4 - Temporary Promotions**

- A. Employees will not be detailed and/or temporarily promoted to higher graded positions or positions with known promotion potential for more than a cumulative total of one hundred twenty (120) calendar days during any twelve (12) month period without the use of competitive procedures.
- B. Temporary promotions for qualified and eligible employees will take effect the date requested on the SF52, or as soon as possible thereafter. Employees must be doing the full scope and performance of the position and be eligible to meet OPM qualifications for temporary promotions. Short term "acting" positions are not considered for temporary promotions.

C. Details to higher grades will not be interrupted for the purpose of avoiding temporary promotions.

D. Temporary promotions for more than one hundred twenty (120) calendar days will be advertised and competed in accordance with OPM regulations.

**Section 5 - Priority Consideration**

A. An employee who would have been referred but was not given proper consideration due to a procedural violation or error in a previous competitive placement action, must be given priority consideration for the next vacancy that the Agency elects to fill, in the same series, grade(s), promotion potential, and location as the one for which consideration was lost. This means that the employee must be referred to the selecting official for consideration before using the competitive procedures. If selected on the basis of priority consideration, the employee is promoted or reassigned noncompetitively. If the employee refuses priority consideration, the employee forfeits his/her entitlement to the priority consideration.

B. The selecting official will exercise priority consideration for specific and identified eligible employee(s) prior to selection from a competitive certificate as directed. If applicable, an employee will have received written notification by the authorized Agency official indicating their eligibility of priority consideration. If the eligible employee is not selected, the employee will be given (in writing or by email) the reason for non-selection. Copies of the notice will also be provided to the Union and Human Resources Office.

**Section 6 - Involuntarily Demoted Employees**

A. Employees who are involuntarily demoted in the Agency without personal cause due to the following events are entitled to consideration for re-promotion before using competitive procedures:

1. An error in the prior classification of a position;
2. A change in classification standards without a change in duties and responsibilities;
3. A change in duties and responsibilities caused by a gradual erosion or by management action; or
4. The application of RIF procedures.

B. Grade retention entitlement lasts for a period of two (2) years and applies to positions at the employee's former grade or at any intervening grades that are to be filled under competitive procedures. The right to this consideration does not apply to a position with promotion potential higher than that of the position held at the time of the change to the lower grade.

### **Section 7 - Scope of Competition**

A. Area of consideration for the vacancy will be determined by the Agency and will be broad enough to reach a high quality applicant pool while meeting its obligations under the Agency's Outreach and Diversity objectives.

B. The Agency may consider the use of an area of consideration limited to the local commuting area prior to opening a separate case examining announcement open to all U.S. citizens.

### **Section 8 - Vacancy Announcements**

A. Publication of vacancies will be made through the government wide electronic recruitment site, currently [www.usajobs.gov](http://www.usajobs.gov) (or its successor).

B. Notification of amendments, cancellations, or other changes to the vacancy announcement will be accomplished through the government electronic recruitment site.

C. Announcements for BU vacancies will be posted for a minimum of fourteen (14) calendar days prior to closing date. By mutual agreement the posting period can be adjusted.

D. Vacancy announcements will include:

1. Statement of nondiscrimination;
2. Announcement number and posting and closing dates;
3. Title(s) title(s), series and grade(s);
4. Anticipated number of (i.e., multiple) vacancies to be filled;
5. Area of Consideration;
6. Type of test(s) to be used, if any;
7. Description of promotion potential, if any;
8. When using an automated recruitment system, each factor/question used to determine the basic eligibility and/or best-qualified candidates will be included on each announcement;
9. Geographic and organizational location;
10. If relocation expenses will or will not be authorized;
11. Summary of the duties of the position;
12. Summary of eligibility and qualification requirements;
13. Permanent or temporary nature, and, if temporary, the duration and if the promotion may be made permanent;

14. Contact information of the Human Resources staff member relating to the announcement;
15. Special working conditions, such as tour of duty, travel requirements, expected overtime, physical requirements, background investigations, etc.;
16. The different levels at which the position may be filled if it is a multiple-level announcement;
17. Additional specific information relevant to the evaluation of the candidates, such as writing samples, portfolios, etc.

### **Section 9 - Open and Continuous Announcements**

A. Open continuous announcements may be used.

B. An employee may file at any time as outlined on the vacancy announcement for open continuous announcements.

### **Section 10 - Application Process**

A. Employees will follow the requirements for filing an application as outlined in the vacancy announcement.

B. The Parties agree to encourage employees to take the initiative to become familiar with the current electronic application process/technology identified at the link in Section 8 above and the associated tools available therein. This will help them set up their profiles, apply for vacancies and become aware of what they can expect once the application process is initiated.

C. It is the employees' responsibility to be aware of open vacancy announcements and to meet application requirements for each announcement.

D. Employees may contact the local staff, e.g., local HR Staff, Administrative Officer (AO), Program Support Assistant (PSA), etc., for assistance about the application process.

### **Section 11 - Interviewing**

If interviews are used, they must be job-related, reasonably consistent, and fair to all candidates. Also, if interviews are used, candidates will be interviewed if reasonably available, in person or by telephone where circumstances warrant.

### **Section 12 - Selection**

A. The selecting official has the right to select or not select any candidates referred. However, the selecting official will give consideration to the candidates' fitness and qualifications, without regard to political, religious, or labor organization affiliation or nonaffiliation, genetic information (including family medical history), marital status, race, color, sex (including pregnancy and gender identity), national origin, disabling condition, age (as defined by the Age

Discrimination in Employment Act of 1967, as amended), or sexual orientation, status as a parent, or any other non-merit-based factor, unless specifically designated by statute as a factor that must be taken into consideration when awarding such benefits, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available. The selection shall be based only on job-related criteria.

B. Upon request, documents relied upon for the selection process will be provided to the Union. Request must be made no later than thirty (30) calendar days from the date of notification of selection or non-selection.

**Section 13 - Career-Ladder Promotions:**

A. Except as provided below, employees within a career ladder will be promoted to the full performance level as soon as they have:

1. Met the time-in-grade requirements, AND
2. Have successfully met the requirements of the current and the next higher grade in the areas in which they have been provided an opportunity and the work is available to perform.

B. Upon request, the supervisor will meet with the employee and will explain where the employee's performance is lacking and advise what the employee must do to qualify for the promotion. Supervisors will be encouraged to speak with employees throughout the performance rating cycle regarding career ladder promotion opportunities.

**Section 14 - Compensation**

An employee's level of compensation upon promotion shall be set in accordance with applicable regulations.

**Section 15 - Competitive Promotion Records for BU Positions**

In accordance with 5 CFR, 335.103, a file sufficient to allow for reconstruction of the competitive action will be kept for two (2) years, unless there is a grievance or complaint pending on the particular promotion action, in which case the file will be kept pending final decision of the grievance or complaint.

## ARTICLE 14 INVESTIGATIONS

### Section 1 – General

A. An investigation may be conducted in the following manner, but is not limited to, face-to-face meeting, VTC or telephone, and preparation of statements or other written witness statements. The Parties agree that investigations should be initiated in a timely manner once the Agency is on notice of allegations of misconduct.

B. The Parties recognize that the length of time needed to initiate and complete investigations may vary given extenuating circumstances, such as case complexity, availability of witnesses, etc.

C. Supervisors are encouraged to seek assistance from ARS Employee/Labor Relations professionals or other experts prior to initiating investigations to assure that proper protocols and investigative procedures are followed.

D. An employee is required to cooperate in the course of an administrative investigation. The right of employees not to incriminate themselves will apply in criminal investigations.

E. The employee will be informed of the process as applicable.

1. At minimum:

- a. If known, the subject of the investigation will be informed that they are the subject of the investigation;
- b. Employees participating in the investigation will be informed of the allegation(s);
- c. The employee will be informed that facts will be gathered and evaluated;
- d. Any information exchanged during the course of the investigation will remain confidential until the investigation is closed.

2. The Union shall be given the opportunity to be present at any examination/fact finding of BUE(s) by a representative of ARS in connection with an investigation if:

- a. The employee reasonably believes that the meeting may result in disciplinary action against the employee; and
- b. The employee requests representation.

F. The right to Union representation is not intended to interfere with the routine interaction between supervisors and employees in the normal course of the workday.



G. If the supervisor or an ARS official, in advance of or during the questioning of an employee contemplates the likelihood of disciplinary action, the employee shall be informed of their right to Union representation prior to further questioning.

H. If an employee requests Union representation, the meeting will be delayed or rescheduled for when a Union representative can be present.

## **Section 2 – Investigations**

A. ARS will inform the Union in advance of an administrative investigation when an employee is the subject of the investigation/fact finding.

B. Investigations should consider all facts, circumstances, and human factors. An investigation should be conducted timely and efficiently.

C. Employees have the right to be represented by the Union while being questioned in an investigation.

D. If the employee is the subject of an investigation, the employee will be informed of the right to Union representation prior to being questioned. The employee will be informed of the nature of the allegation(s). Once an employee requests Union representation, except in very rare and unusual circumstances, no further questioning will occur until Union representation is present.

E. Supervisors, employees, and Union representatives will not, except as specifically authorized, disclose any information about an investigation. An employee may discuss the investigation with their authorized Union representative. A copy of the statement of the employee will be given to the employee and/or the employee's representative upon written request.

At the conclusion of investigation, the employee who was the subject of the investigation will receive notice of the final outcome, as soon as practicable.

F. Upon written request, the subject of the investigation and the Union will be furnished a copy of the complete investigation and evidence file and all other relevant and pertinent information which would be provided under the Freedom of Information Act (FOIA) or 5 U.S.C., 7114.

G. The statement of employee rights and obligations will be consistently applied. That statement will be consistent with this agreement and will include the following:

1. The employee's right to representation by the Union;
2. The right of an employee to a copy of their personal statement; and,
3. The right of an employee not to incriminate themselves.

H. An employee or the employee's Union representative, upon written request, shall receive a copy of all evidence used to support the Agency's action. This includes, but is not limited to: copies of all recordings, testimony/transcripts, emails, reports or findings, and photographs.

**Section 3 – Kalkines**

A. Kalkines warning grants the employee “use immunity,” which means that any truthful statements made in response to the investigation are immune from subsequent use in criminal prosecution against them.

B. The Parties agree to discuss the application of Kalkines on a case-by-case basis.

C. If the employee persists in remaining silent after receiving a Kalkines warning, the Agency may pursue removal for failure to cooperate in any investigation so long as it clearly notified the employee that the options are to either answer the questions with the immunity granted or refuse to answer and undergo proposed discipline up to and including removal.

**ARTICLE 15**  
**DISCIPLINE AND ADVERSE ACTIONS**

**Section 1 - General**

A. The Agency and the Union recognize that the public interest requires the maintenance of high standards of conduct. The objective of discipline is to correct and improve employee behavior so as to promote the efficiency of the service. Actions based solely upon unacceptable performance should be taken in accordance with Title 5, Chapter 43 and will be covered in Article 17, Performance Management.

B. The Parties agree to the concept of progressive discipline, when appropriate. Any level of discipline may be bypassed when the nature of the behavior /conduct makes a lesser form of discipline inappropriate.

C. Supervisors are encouraged to use coaching and/or counseling sessions prior to taking disciplinary action.

D. The Parties agree to promote the concept of alternative discipline in appropriate circumstances.

**Section 2 - Definitions**

For purposes of this article, the following general definitions are used:

1. A disciplinary action is defined as official written reprimands or suspensions of fourteen (14) calendar days or less.
2. Adverse actions are defined as removals, suspensions of more than fourteen (14) calendar days, reduction in pay or grade or furloughs of thirty (30) calendar days or less.
3. Representative means "Union-designated representative" such as a steward or officer or when applicable any other formally designated representative as selected by the employee per 5 U.S.C. § 7114(a) (5).

**Section 3 - Fairness and Timeliness**

Disciplinary actions must be consistent with applicable laws, regulations, policy, and accepted practice within the Agency. If the Agency believes that disciplinary or adverse action is necessary, such action will be initiated in a timely manner after the Agency has completed an investigation of the alleged misconduct. Discipline will be applied fairly and equitably and will not be used to harass employees.

**Section 4 - Coaching and/or Counseling (Non-Disciplinary Tools)**

A. Prior to taking disciplinary action, supervisors are encouraged to use any of the following as non-disciplinary actions to correct the misconduct:

1. Coaching and/or counseling sessions,

2. Letters of Caution, and
3. Informational and instructional letters or their like.

B. These are not punitive nor are they disciplinary in nature. Rather, these are constructive instruments designed to correct behavior at the lowest possible level.

C. At the discretion of the supervisor, such letters, notations, or records may be maintained by the supervisor. Such records will be maintained to show that the employee was "on notice" of expected workplace behavior.

D. Coaching and/or counseling will be conducted privately and in such a manner as to avoid embarrassment to the employee and to insure that there is no confusion as to the intent of the discussion/meeting.

#### **Section 5 - Alternative Dispute Resolution (ADR)**

A. The Parties recognize the shared interest in correcting behavior promptly and avoiding unnecessary or lengthy litigation. The employee or the Union may request the use of an ADR. However, the Agency retains the right to offer Last Chance Agreements (LCAs), and other forms of alternative resolution.

B. Alternative resolution options, including LCAs, are always voluntary in nature and require mutual agreement between the Agency and the employee prior to being executed.

Prior to offering an employee a form of ADR, the Union will be notified and be given an opportunity to be present at any meeting in which the employee is offered such an agreement.

#### **Section 6 - Reprimands**

A. Reprimands are effective upon date of issuance to the employee. The reprimand will state the specific reasons for the action. Management agrees that the employee shall be given a reasonable amount of time (up to, two (2) hours), to review the information provided.

B. At the discretion of the Agency additional time may be granted on a case-by-case basis. Two (2) copies of the reprimand will be provided to the employee. The employee may provide a copy of the reprimand to the Union. One (1) copy of any document(s) related to the action will be provided to the requesting party (employee and/or Union) upon request. The Parties agree grievance timelines will be preserved until such time as the evidence file has been received.

C. The reprimand will identify the employee's grievance rights, to whom a grievance would be filed, and the time frames for filing the grievance in accordance with the Grievance Procedures, Article 8. The reprimand will also identify the period of time that it will remain in the

employee's eOPF. At the conclusion of the retention period, the reprimand will be removed from the employee's eOPF.

### **Section 7 - Suspensions and Adverse Actions**

A. An employee for whom a suspension of fourteen (14) days or less or an adverse action is proposed is entitled to a thirty (30) calendar day written notice prior to the effective date of the action, except when the crime provision has been invoked.

B. An employee for whom a suspension or an adverse action is proposed is entitled to a response period of fifteen (15) business days.

C. Notices will state specific reasons for the proposed action. One (1) copy of any document(s) related to the action will be provided to the requesting party (employee and/or Union) upon request.

D. Management agrees that the employee shall be given the opportunity to use a reasonable amount of time (up to ten (10) hours) to review the evidence on which the notice is based and that is being relied on to support the proposed action. At the discretion of the Agency, additional time may be granted on a case-by-case basis.

E. Two (2) copies of the decision letter will be provided to the employee. The employee may provide a copy of the decision letter to the Union.

F. The employee and/or representative may respond orally and/or in writing as soon as practicable but no later than **fourteen (14)** calendar days from receipt of the proposed action notice. The response may include written statements of the persons having relevant information and/or other appropriate evidence. Extensions for replying to proposed adverse actions and suspensions may be granted when good cause is shown. Requests for extensions shall be submitted in writing.

G. In responding to a proposed disciplinary action, the employee will be entitled to Union representation and will be responsible to secure such representation and to notify the Deciding Official of their election to be represented.

H. The written decision shall include the reason for the disciplinary action and a statement of findings and conclusions as to each charge. The decision shall also include a statement informing the employee that suspensions become part of the permanent record. The letter will also provide the employee's appeal rights and/or grievance rights. The Decision Letter will include the time period for filing a grievance and to whom it must be filed.

### **Section 8 - Investigation of Disciplinary Actions**

A. Management will investigate an incident or situation to determine whether or not discipline is warranted. Weingarten rights will be afforded employees engaged in investigatory interviews in accordance with Article 5.

B. Investigations will be conducted fairly and impartially. The Parties will remind employees of their responsibilities to answer all questions asked during an investigative interview fully and with candor.

### **Section 9 - Removal of Disciplinary Records**

A. Reprimands will be removed from an employee's eOPF after a two (2) year period, unless such action has been extended in writing or a subsequent infraction that referenced the reprimand has occurred.

B. At the election of the issuing management official, reprimands may be removed from the eOPF at any time after one (1) year from the original effective date if the employee's behavior has improved and the discipline has served its purpose. The employee may request that the supervisor issuing the reprimand remove it after one (1) year with the following provisions: a) the employee can demonstrate the behavior has been corrected, and b) only one (1) request may be initiated by the employee.

C. Should the supervisor decide not to remove the reprimand after the employee makes the request for its removal, it is understood that this decision is non-grieveable.

D. Suspensions become a permanent part of employee's eOPF.

### **Section 10 - Administrative Reassignment**

Administrative reassignments or demotions may be used when deemed to be the best corrective action. Appropriate procedures must be followed and appeal rights will be provided for decisions of reassignments or demotions made for reasons of misconduct

### **Section 11 - Last Chance Agreements**

A. Last Chance Agreements (LCAs) refer to situations in which the Agency agrees to hold in abeyance an adverse action against an employee in exchange for the employee's agreeing to conform to specific conditions for a set period of time.

B. The understanding is that if the employee does not meet his or her obligation under the agreement, then the Agency is free to reinstate the adverse action under the terms of the agreement. The Parties recognize that LCAs are the employee's final choice between adverse action (i.e., suspension or removal) and adhering to the terms of the LCA.

C. The use of LCAs shall be offered at the Agency's discretion consistent with the facts of the case. The employee retains the right to accept or reject the offer of settlement. The Parties recognize that acceptance of the terms of an LCA are entered into voluntarily but are un-retractable upon signature.

D. Prior to offering an employee an LCA, the Union will be notified and given an opportunity to be present at any meeting in which the employee is offered such an agreement.

### **Section 12 - Self Incrimination**

The right of employees not to incriminate themselves will apply in criminal investigations.

**ARTICLE 16**  
**SURVEILLANCE**

**Section 1 – General**

A. The Parties recognize that surveillance is conducted for safety and internal security reasons.

B. This article covers, but is not limited to: camera, video, microphone, access card swipes, telephonic, cell phone, computer, and other electronic devices.

C. If the Agency uses covert or hidden surveillance during an investigation, the following shall apply if a disciplinary or adverse action is proposed against an employee represented by the Union:

1. The Union will be given a copy of all relevant evidence collected;
2. The Union will be provided a copy of the pertinent video tapes or other electronic media; the only exception would be for issues of public safety or national security.
3. The Union will be allowed to represent affected employees in any subsequent discussions or proceedings involving them.

D. The Union is not precluded from any further negotiations on the impact and implementation of covert or hidden surveillance.

E. No electronic recordings may be made without mutual consent except for the Office of Inspector General (OIG) investigations, other law enforcement investigations, or EEO investigations.

**ARTICLE 17**  
**PERFORMANCE MANAGMENT**

**Section 1 -General**

- A. The application of performance standards and the determination of acceptable level of competence will both be made in a fair, objective, job-related and measurable manner. When the employee is evaluated, management has determined that factors beyond the control of the employee will be taken into consideration.
- B. The employee will not be rated on union representational activities.
- C. It is the Agency's policy to operate a performance appraisal program in a manner which is consistent with applicable statutes, regulations, and this agreement.
- D. A written performance plan will be provided to each employee covered by this agreement at the beginning of each appraisal period (normally within thirty (30) days).
- E. Employees shall not be required to perform at a level higher than fully successful.

**Section 2 -Policy**

- A. The official appraisal period, for which a performance plan must be prepared and monitored, and for which a summary performance rating (rating of record) will be issued, is normally October 1 through September 30 of each year.
- B. The performance rating prepared at the end of an appraisal period is for performance of assigned duties over the entirety of the specified appraisal period.
- C. The minimum performance appraisal period is ninety (90) days. If an employee is not on a performance plan for ninety (90) days, the employee cannot be rated.
- D. A written performance plan will be provided to each employee within thirty (30) days of the new performance period. The performance plan will contain all of the written performance elements, critical and at least one (1) non-critical element, and their performance standards.
- E. The performance plan must be communicated to the employee before the employee may be held accountable. The employee will sign and date the plan to acknowledge they have received their performance plan.
- F. Standards established for an employee's position shall be in writing and communicated to the employee when the employee enters a position or when a new standard is established, or when a change in the performance standard occurs within the employee's position. Evaluation of performance standards will be consistent with written procedures.



G. Progress reviews by the supervisor will be conducted during the appraisal period. The supervisor should conduct an interim progress review at the midpoint of the appraisal period to ensure that performance elements and standards are appropriate and to advise the employee of current performance. Supervisors and employees are encouraged to communicate frequently during the appraisal period and discuss any performance concerns that may arise as soon as possible.

H. Normally the immediate supervisor will be responsible for establishing the employee's performance plan, will provide the mid-year progress review, and will prepare the final performance appraisal rating (rating of record).

I. Normally the employee's second-level supervisor will review and approve the performance plan and the final performance appraisal rating (the rating of record).

J. When an employee changes positions and has served the minimum appraisal period in the position from which they have changed, the rating official will prepare an exit summary rating. This summary rating will be considered and given appropriate weight when the next rating of record is done.

K. When an employee is reassigned, they will be given appropriate training when applicable. In the course of evaluating work performance, management will consider any changes of position, the need for learning new job skills and duties, and the nature and timing of training provided.

### **Section 3. Employee Responsibilities**

All employees are responsible for:

1. Participating in discussions with their supervisor concerning the development of performance elements, standards and measures (optional) and participating in their progress reviews and performance appraisals;
2. Ensuring they familiarize themselves with their position description and performance plan, requesting clarification of expectations if necessary, and proactively requesting information to be able to work towards a rating beyond a fully successful from the supervisor;
3. Taking responsibility to improve their own performance and support team endeavors;
4. Seeking performance feedback from their supervisor; and
5. Documenting their performance accomplishments, and being prepared to provide written specific examples of their accomplishments including feedback from internal and

external customers during the performance appraisal discussion (see Article 18, Employee Awards and Recognition).

#### **Section 4. Management Responsibilities**

Management is responsible for:

1. New supervisors will receive adequate training in performance management prior to conducting evaluations.
2. Engaging the employee in the process of establishing and documenting the employee's performance plan.
3. Communicating performance expectations clearly, monitoring performance during the appraisal period and providing performance feedback to employees, providing development opportunities as applicable for the employee's current scope of position and career ladder promotion as applicable, and taking appropriate actions to address performance not meeting expectations.
4. Proactively, supervisors will provide regular and reoccurring feedback on the quality of performance during the appraisal period, and preparing ratings. Supervisors will inform employees if their performance drops below the fully successful level.
5. Preparing performance ratings in a timely manner and ensuring equity and consistency in performance ratings.
6. Providing training when applicable (e.g., technical and/or safety training on equipment, new technologies and changes in procedures).

#### **Section 5. Rating Performance**

Normally, a written final performance appraisal rating (record of rating) will be issued to each employee by October 30. If a performance cycle has been extended, the supervisor should rate employees within fifteen (15) days of the end of the extended cycle.

#### **Section 6. Unacceptable Performance**

The Parties recognize that there is an important duty to accomplish the mission of the Agency in an effective and efficient manner, and to encourage employees to perform to the best of their ability. They also recognize that the work performance of individuals varies on a daily basis. Supervisors are responsible for monitoring their employees' work throughout the performance year. Supervisors are encouraged to act informally, when appropriate, at an early stage to correct any decline and avoid the need to take formal action.

A. If at any time during the performance appraisal period an employee's performance is determined to be unacceptable in one or more critical elements, the supervisor must:

1. Notify the employee of the performance element(s) for which performance is unacceptable; and,
2. Inform the employee of the performance requirement(s) or standard(s) that must be attained to demonstrate acceptable performance. The supervisor must inform the employee that unless his/her performance in the critical element(s) improves to and is sustained at an acceptable level, the employee may be reassigned, reduced in grade or removed.

B. Performance Improvement Plans (PIPs): The goal of a PIP is a mutual desire to return the employee to fully successful performance as soon as possible. A PIP should not be used as or considered as a punitive tool. For each critical performance element in which the employee's performance is unacceptable, the supervisor must afford the employee a reasonable opportunity to demonstrate acceptable performance commensurate with the duties and responsibilities of the employee's position and place the employee on a PIP. The PIP must include:

1. A minimum opportunity period of ninety (90) days to demonstrate acceptable performance; it is understood that the time frame may be extended if additional time is needed;
2. Identify and describe the performance deficiencies in the performance elements and standards for which the employee's performance is at the unacceptable level;
3. Provide clear goals which are appropriate for the responsibilities of the employee's position;
4. Frequent (at a minimum, every two (2) weeks) interaction and feedback with supervisor regarding progress; and
5. Required progress reports will be documented in writing and a copy provided to the employee.

C. If the employee demonstrates an acceptable level of performance during his/her opportunity period, then he/or she is required to maintain an acceptable level of performance for one (1) year from the beginning of the opportunity period.

D. In accordance with 5 CFR, 432.105 (a)(2), if the employee does not demonstrate an acceptable level of performance for a critical element during the opportunity period or for one (1) year from the beginning of the opportunity period, the supervisor may initiate a reassignment, reduction in grade, or removal action.

E. If an employee elects to have Union representation, management will provide copies of any letters or proposed actions and a decision letter to the Union representative. Upon request, PIP documents shall be provided throughout the process.

### **Section 7. Details, Temporary Duty Assignments (TDY) and Temporary Promotions**

A. Performance plans must be provided for details and temporary promotions of ninety (90) days or more. Performance plans will be provided in writing to the employee normally within fifteen (15) days of the start of the detail or temporary promotion.

B. The supervisor responsible for the detail or temporary promotion should document the employee's accomplishments at the end of the TDY assignment or detail and forward the documentation to the employee's supervisor for appropriate consideration. The employee's supervisor will give the accomplishments the appropriate consideration (i.e., performance of elements and standards associated with the employee's normal duties versus duties not normally performed).

### **Section 8. Individual Developmental Plan (IDP)**

As a part of the performance planning process, each employee is encouraged to discuss short- and long-term learning and developmental goals with the supervisor and to develop a plan. The plan may include elective training, education, and developmental activities in which employees may engage to improve their knowledge, skills and abilities, and ultimately job performance.

### **Section 9. Resolving Disagreements**

A. In the event that an employee and the supervisor disagree over the employee's performance elements or standards, or if they disagree over the performance appraisal, the employee may request a meeting with the next level supervisor. This meeting will be held on a timely basis. The purpose of the meeting is to attempt to resolve any differences of opinion regarding the content of the employee's performance elements or standards or performance appraisal.

B. If the Parties are unable to reach agreement at the informal step, the employee may move to the next step and file a formal grievance over the procedures used to establish the elements or standards. The substance of the elements or standards cannot be grieved.

## ARTICLE 18 EMPLOYEE AWARDS AND RECOGNITION

### Section 1 - Purpose

Recognition of employees through monetary and non-monetary awards reflects the Parties' efforts to promote continuous improvement and achievement in mission accomplishments. The employee recognition program provides a positive indication of the Parties' commitment to providing quality public service. The intent of this program is to promote a positive work environment and to link awards to employee contributions that enhance Agency performance. The program will be administered in accordance with 5 U.S.C., 2301 Merit Principles.

### Section 2 - Types of Awards

A. The type of awards by which employees may be recognized, and the awards which employees may be eligible to receive include but are not limited to:

1. Monetary: A cash award granted to an employee as an individual or member of a group (e.g., Spot, Suggestion, Quality Step Increase (QSI), Performance, Time-off Award, Career Service Award, and Retirement Recognition).
2. Non-Monetary: A letter of appreciation or other appropriate means to recognize contributions that do not meet the standard for cash award or in cases where the contributions do meet the standard but the supervisor chooses not to grant a monetary award (e.g., Letter of Appreciation, Informal Keepsake Award).
3. Performance Awards:
  - a. A performance award is based solely on an employees' performance rating of record assigned at the end of the appraisal period. Monetary amounts associated with performance awards are subject to budgetary constraints.
  - b. An employee alleging inconsistent application of performance standards and critical elements may pursue the complaint under the negotiated grievance procedure.

B. Award nominations will follow the justification, submission, and approval process as outlined in Agency regulation.

C. Accomplishment reports may be required. The report is intended to highlight accomplishments and/or achievements of work beyond the fully successful level.

D. The Parties agree that joint training will be conducted for all employees for the awards process. The training shall include but not be limited to, accomplishments reports, justifications, and submission process. Training will be conducted at mutually agreed date(s), locations, and time(s).

**ARTICLE 19**  
**BREAK ROOMS/BREAK AREAS**

**General**

Both Parties recognize that the health and well-being of employees are necessary to the successful accomplishment of the Agency's mission. Where applicable, local management will provide break rooms, and/or break areas for employee use.

**Section 1 - Location**

Break rooms/areas shall be reasonably accessible to the employees' work areas, subject to compliance with OSHA, biological containment, and safety regulations.

**Section 2 – Current Break Room(s)**

The Parties agree that the current identified break space(s) is sufficient to meet employees' needs.

**Section 3 – Changes to Break Room(s)**

Should ARS/locations need to change access and/or configuration of designated or existing break rooms/break areas, ARS agrees to notify the Union and negotiate as required.

**ARTICLE 20**  
**EMPLOYEE ASSISTANCE PROGRAM (EAP)**

**Section 1 - Program Purpose**

The purpose of EAP is the appropriate prevention, treatment and rehabilitation of employees with alcohol, drug abuse or other biopsychosocial problems that are adversely affecting the employee's job performance and/or conduct. Biopsychosocial problems may include physical, emotional, financial, marital, family, legal, or vocational issues. Employees who suspect they may have such a problem, even in the early stage, are encouraged to voluntarily seek counseling and information on a confidential basis by contacting the individual(s) designated to provide such services. Supervisors are also encouraged to note when employees appear to be experiencing difficulties for which EAP may provide assistance, and to refer the employee to EAP for assistance. Early intervention may be helpful in returning the employee to full productivity.

**Section 2 - Record of Participation**

The Agency will assure that no employee will have job security or promotion opportunities jeopardized by a request for counseling or referral assistance. The Agency will ensure that the confidentiality of medical records of employees concerning treatment for problems related to alcohol, drugs, emotional concerns, or other personal issues will be preserved in accordance with current laws and OPM regulations or successors.

**Section 3 - Voluntary Participation and Employee Responsibility**

The existence and functions of counseling and referral programs will be publicized to employees. No employee will be required to participate or be penalized for merely declining referral to counseling services or for participating in the services provided.

**Section 4 - Confidentiality**

A. The Parties recognize that all confidential information and records concerning employee counseling and treatment will be maintained in accordance with applicable laws, rules, and regulations.

B. Without an employee's specific written consent, the supervisor may not obtain information about the substance of the employee's involvement with a counseling program. Information obtained with the employee's authorization from such counseling programs may not serve as the basis for disciplinary or adverse actions.

**Section 5 - Excused Absence(s)**

A. A supervisor and/or manager shall grant up to one (1) hour of excused absence for each counseling session, up to a maximum of six (6) sessions per calendar year, during the assessment/referral phase of rehabilitation.

B. Reasonable time to and from the scheduled appointment will be granted as an excused absence in accordance with individual circumstances. The employee will be required to notify their immediate supervisor as soon as practicable if the agreed-upon circumstances were to

change. If additional time is required, the employee will request leave as soon as practicable and the request will be approved in accordance with existing leave policies and this agreement.

C. Supervisors will release employees for EAP visits as soon as practicable and as soon as work requirements allow. The Parties will encourage employees to make appointments with the EAP professional.

D. The number of excused absences for EAP counseling services will be consistent with the current Agency regulation and/or successors.

**Section 6 - Leave Associated with EAP**

It is the policy of the Agency to grant leave (sick, annual, or LWOP) for the purpose of treatment or rehabilitation for employees under EAP as would be granted for employees with any other health problem.



## **ARTICLE 21 SAFETY and HEALTH**

### **General**

A. The Parties agree to cooperate in the furtherance of safety objectives, the enforcement of all appropriate safety regulations, rules, and published standards. The locations will attempt to maintain conditions of employment that are free of hazards or conditions that may cause accidents, injuries, or illnesses. Employees will be required to comply with safety standards, rules and regulations, and the use of safety equipment which is provided by each location.

B. Maintaining safe and healthy work environments, as a shared responsibility of the Union and locations, is necessary for the accomplishment of the location's mission and contributes to a high quality of life for employees.

C. There will be no restraint, interference, coercion, discrimination, or reprisal directed against any employee for filing a report of an unsafe or unhealthful working condition or for participating in Occupational Safety and Health Program activities or because of the exercise by an employee on behalf of him/herself or others of any right afforded by the Occupational Safety and Health Act, Executive Order 12196, 29 CFR, Part 1960, or any provision of this agreement.

D. A Union representative whose duty station is at that location will be invited to accompany the Agency representative(s) during safety inspections, e.g. OSHA.

### **Section 1- Safety Check**

When an employee is assigned duties within the normal confines of the location at work sites that are beyond the visibility of others, a periodic safety check may be arranged by the supervisor.

### **Section 2 – Safety and Health Committee**

A. The Safety and Health Committee (SHC) or local equivalent designation, is a point of contact for safety and/or health initiatives in each location involving BUEs.

B. The existing safety plan(s)/charter will be available on the shared drive and/or intranet.

C. The Union may designate a representative(s) to serve on the location SHC.

D. Union representative(s) of the SHC will be serving on duty time.

E. By mutual agreement, the SHC may meet by means of video conferencing or teleconferencing.

F. Union participation in SHCs is not to be construed as a waiver of the Union's right to collective bargaining.

G. At least quarterly, the Union President will be provided (written) information on work related illnesses, injuries, and accident trends for development of recommendations to go forward to the appropriate location management.

NOTE: The information will be redacted to preserve Personally Identifiable Information (PII) and Health Insurance Privacy and Portability Act (HIPPA) information accordingly.

### **Section 3 - Occupational Medical Surveillance Program**

A. In accordance with government wide regulations employees will be allowed to participate in the Occupational Medical Surveillance Program.

B. Annually, employees will be reminded that they are eligible to participate in the Occupational Medical Surveillance Program.

### **Section 4 - Investigation of Accident, Injuries, and Near Misses**

Management agrees to investigate the facts and circumstances related to accidents, injuries, and near misses in accordance with Agency policy and procedures, with the goal of promoting a safer work environment.

### **Section 5 - Work-Related Injuries and/or Illnesses**

A. Employees have the right and are encouraged to report injuries and/or illnesses that are work-related to a supervisor.

B. An employee will be notified promptly concerning possible options such as a claim under the Federal Employee Compensation Act (i.e., Workers' Compensation). The employee may request assistance regarding a claim for compensation for such work-related illness or injury and the location will provide such assistance.

C. Appropriate location personnel are promptly notified to ensure timely processing of necessary reports and employee claims.

D. Employees may request information related to leave options.

### **Section 6 - Imminent Danger**

A. In accordance with 29 CFR, 1960, the term "imminent danger" means any conditions or practices in any workplace which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through normal procedures.

B. An employee may decline his or her assigned task because of reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is an insufficient time to seek effective redress through normal hazard reporting and abatement procedures.

C. Employees will report imminently dangerous situations by the most expeditious means available to any supervisor or safety officer who is immediately available.

D. The Union will be notified immediately by ARS and/or location of all reports of imminent danger situations so that it may provide representation and assistance to employees making reports and given an opportunity to be present during any inspection. Employees and the Union will be told when the imminent danger situation will be inspected. Inspections of imminent

danger situations will occur within the timeframe established by applicable regulations, 29 CFR, 1960.28 (d) (3).

E. All Agency and/or location determinations and actions on imminent danger reports will be put in writing to the reporting employee and the Union explaining the basis for the findings and actions within the timeframe established by applicable regulations (currently within fifteen (15) days from the date the report was made to the Agency and/or location if no inspection is to be done or within fifteen (15) days after the completion of an inspection under 29 CFR, 1960.29(d) (4)).

F. If the conditions cannot be immediately corrected, employees will be assigned to work in a safe area.

G. If the supervisor believes the condition or corrected condition does pose an immediate danger, the supervisor shall request an inspection by safety specialists. The Union President or designee shall also be contacted and afforded the opportunity to be present at the time that the inspection is made.

H. When the Agency and/or location has determined that the imminent danger has been resolved and employees may return to work, supervisors may verbally instruct employees to return to their work areas. This will be promptly followed by the supervisor or other management official sending an email or other written document notifying the employee and Union that the situation is now deemed to be corrected and the area is safe. Employees are advised that failure to follow supervisors' instructions may result in disciplinary action.

#### **Section 7 – Reporting and Processing of Safety Complaints**

A. Any employee, group of employees, or Union representative of employees who believe that an unsafe or unhealthy working condition exists in any worksite has the right to report such condition to any supervisor, manager, executive, OSHA, SHC member, or the Union. An inspection of potentially serious conditions will be made within the timeframe established by applicable regulations. Appropriate testing or sampling may be required as part of the inspection under 29 CFR, 1960.28 (d) (3).

B. When locations or other appropriate authority determines that a dangerous or potentially dangerous condition exists at a worksite, employees at that worksite will be notified as soon as practicable so that precautionary steps can be taken.

C. At the conclusion of a review, investigation or analysis of a potential or imminent safety concern, the reporting employee will be advised that the issue is being addressed, and if/how/when it has been resolved. This information will also be shared with the Union President or designee.

D. If the Union is not satisfied with the location's resolution to a report of hazardous working conditions, the Parties agree to meet and have an after-action review of the situation.

### **Section 8 – Posting Notices**

A. Locations shall post a notice of hazardous conditions discovered in worksites as required by applicable laws, rules, and regulations as soon as practicable. The notice shall be posted at or near the location of the hazard and shall remain posted until the cited condition has been corrected.

B. Such notices shall contain a warning and description of the unsafe or unhealthy condition and any required precautions to the full extent required by applicable laws, rules, and regulations.

### **Section 9– Abatement of Safety Issues**

A. Agency and/or location shall promptly abate any known unsafe and unhealthy working condition. Toward this end, any equipment, devices, structures, clothing, supplies, tools, or instruments that are found to be unsafe will be removed from service, locked-out, and/or tagged-out or rendered inoperative, as appropriate.

B. If there is an emergency situation in a worksite, the paramount concern is for the preservation of safety and health. Should it become necessary to evacuate an area, the location shall take precautions to protect the safety and health of employees. Employees ordinarily will not be readmitted to an evacuated area until it is determined that there is no longer danger to the evacuated personnel.

C. An abatement plan will be prepared if the abatement of an unsafe or unhealthy working condition will not be possible within thirty (30) calendar days. Such plan shall contain a proposed timetable for the abatement and a summary of steps being taken in the interim to protect employees from being injured as a result of the unsafe or unhealthy working conditions.

D. The Union President and/or designee will be notified as soon as practicable regarding the development and implementation of abatement plans and all personnel subject to the hazard shall be advised of interim measures in effect and shall be kept informed of subsequent progress on the abatement plan.

E. If conditions cannot be immediately corrected, locations will make efforts to utilize work reassignments or other available measures.

F. If an employee has safety concerns about their work environment their concerns should be immediately reported to their supervisor. The supervisor will make an assessment as soon as practicable. The employee has the liberty to elevate their concerns to the next level supervisor and /or SHC in the event the immediate supervisor has failed to respond to the employee's concern.

G. An employee may notify the Union of their safety concern(s). The Union may request additional information as well as information regarding resolution of the safety concern(s).

H. Employees may request a change of duty location during the work process if they reasonably believe that their health or well-being may be affected by the work operations being conducted.

I. The Agency has the responsibility to provide adequate protections and take measures to reduce the risk and prevent heat-related illnesses and deaths. The Agency will ensure that adequate

supplies of potable water are available to employees required to work out of doors in high heat conditions.

### **Section 10 – Safety Equipment and Personal Protective Equipment (PPE)**

A. The Agency and/or location shall provide relief or assistance to employees required to lift heavy items, or to operate machinery or equipment requiring exertion beyond safe limits specified in applicable laws, rules, or regulations (20 CFR, 416.967 Physical Exertion Requirements).

B. Eye hazard areas, equipment, and/or occupations will be designated by the Agency, or designee (e.g., Safety Officer). Industrial safety glasses, plain or prescription, will be issued at no cost if an individual is working in a designated eye hazardous area or operation.

C. Prescriptions will be provided by the employee from their own eye doctor. Prescriptions must be less than one (1) year old. Locations will provide the employee with the prescription safety glasses for use at work only.

D. Personal Protective Equipment (PPE), as required by appropriate Federal and/or State government (or its subdivisions) standards to protect employees from hazardous conditions encountered during the performance of their official duties, will be provided at no cost to employees.

E. At a minimum, locations will provide employees information and any training required by OSHA standards on PPE issued to employees.

### **Section 11 – Smoking**

The Parties agree that a smoke-free work environment is essential to the health of all employees. Smoking will be permitted only in designated areas.

### **Section 12 – Safety Training**

A. Locations agree to conduct training in the emergency alarm and evacuation system at the locations including evacuation drills at least every six (6) months.

B. All location employees shall receive appropriate training in order to conduct their work in a safe manner.

### **Section 13 - Wellness Program**

Employee wellness and the investment in programs to maintain employee health, contribute directly to sustained productivity and reduction of lost employee time due to illness. Therefore, locations may facilitate and/or encourage programs in such areas as weight reduction, stress reduction and management, nutritional counseling, smoking cessation, prevention of injuries, health screenings, and exercise.

### **Section 14 - Temporary Accommodations**

For an employee requesting return to duty from sickness or injury with temporary limitations placed on his/her performance, as substantiated by a doctor's certificate, locations will make a diligent effort to assign the employee to available work within these limitations. If a temporary

accommodation is not available, the employee will be placed on continuation of pay (Workers' Compensation), if eligible, or the employee may elect to take leave.

**Section 15- Personal Security**

The Parties recognize that personal/property security and protection are mutual responsibilities of the employer, the Union and employee; each have a role in maintaining a safe and secure working environment. The Agency's internal security practices will be focused on protecting employees' safety and the Federal Government's facilities and property.

- A. Locations shall provide all employees a secure location for storing personal property. Employees are advised that for compelling reasons locations may access locked storage areas. This may include but is not limited to: mission requirements, security requirements, safety needs, and facility maintenance requirements.
- B. When a secured locker/drawer/space is accessed when an employee is not present, the employee will be advised that their locker/drawer/space was opened. Normally, when a secure locker/drawer/space is accessed there will be two (2) individuals present.
- C. As soon as practicable, locations shall notify all employees of incidents such as but not limited to: bomb threats, severe weather, suspicious persons/packages, active shooter, etc., received at or about any potentially affected facility.
- D. Employees who report physically threatening situations will receive appropriate assistance from the location.
- E. When locations become aware that an employee in the work place has been subjected to threats, harassment, or other conduct leading to a reasonable fear on the part of the employee for their safety, locations shall promptly discuss the matter with the employee and take appropriate action within the scope of applicable regulations and rules.
- F. Locations will be responsible for providing information related to safety policies and procedures for all employees. Training will be provided to employees when protocols are updated or new protocols are introduced.
- G. Employees will be provided with emergency numbers during new employee orientation and any emergency response-related training.

**Section 16 - Workplace Violence**

Violence constitutes a health and safety hazard in the workplace. Exposure to violence can result in both physical and emotional harm to employees. Although it is the Agency's obligation to provide a safe and secure working environment, locations and Union agree to work together to prevent workplace violence and to minimize the occurrence and effects of violence in the workplace should it occur.

- A. All employees who report harm resulting from an incident of workplace violence shall:
  - 1. Have access to immediate first aid and transportation to the nearest medical facility, as appropriate;

2. Have access to emotional support, including but is not limited to traumatic stress debriefing and counseling under the employee assistance program(s); and
3. Be referred to the appropriate Human Resources staff member or designee for information on filing a Workers' Compensation claim.

#### **Section 17 - Emergency Preparedness Plans**

- A. Location employees shall have access to the emergency preparedness plan that establishes procedures for safeguarding lives in the event of incidents such as: fire, earthquake, bomb threat, tornado, flood or similar natural or man-made emergency.
- B. Employees may request specific information on emergency plans from SHC.
- C. It is expected that employees will participate in drills unless otherwise excused by their supervisor.
- D. Each location's evacuation plan will be posted and available on the shared drive and/or intranet.
- E. Locations shall ensure that there is an emergency notification system at the location that allows immediate notification of employees of emergency situations.

#### **Section 18- Hazardous Materials**

- A. Each laboratory will maintain a current list of all hazardous materials and Safety Data Sheets (SDS) in accordance with law, rule, and regulation.
- B. Employees will be provided initial training on the safe handling and disposal of each hazardous chemical and material used in the worksite. Further training would occur if a change to the initial training has been implemented, or upon request. The Agency may include this requirement as part of the employees' performance standards.

#### **Section 19 - Ergonomic Review of Work Area and Duties**

- A. Employees may request an ergonomic review of their work area and duties at any time.
- B. Once the ergonomic review has been completed, supervisors will review the report with the employee to determine the necessary outcomes. Ergonomic adjustments to the work area and/or equipment may be acquired if deemed necessary.

#### **Section 20 – Applications of Herbicides, Pesticides, Glue, Paints, Etc.**

- A. There will be limited application of carpet glue, HVAC cleaning agents, paints, or other like construction or maintenance chemicals during work hours, when possible, in enclosed spaces occupied by employees. Locations will notify employees as soon as practicable of work to be conducted during normal work hours.
- B. Locations will notify employees prior to the spraying of herbicides and pesticides in and/or around the building(s).

#### **Section 21 - First Aid, CPR and AEDs**

- A. Locations shall provide first aid kit(s).

B. ARS may provide training on a voluntary basis to employees at each location in the techniques of cardiopulmonary resuscitation (CPR)/automatic external defibrillator (AEDs), and first aid. Each location may post the names, work areas, and work telephone numbers of all location employees with this training (who have given permission) near each telephone. Recertification training may be provided periodically.

**Section 22 - Indoor Air Quality**

A. Employees are entitled to work in an environment containing safe and healthful indoor air quality. The Agency shall provide safe and healthful indoor air quality by conforming to laws, guidelines, regulations, and/or policies issued by federal regulatory agencies such as OSHA, EPA, and GSA.

B. On-site investigations/inspections will be conducted when a problem concerning indoor air quality or building-related illness is formally brought to the Agency's attention. These investigations/inspections shall meet the criteria of established government wide rule or regulations including OSHA protocols.

C. The Agency will make reasonable efforts to maintain comfortable indoor work temperatures. Employees who are uncomfortable with those temperatures may suggest and request temporary provisions to assist them in maintaining a comfortable working environment.



## **ARTICLE 22 TRAINING**

### **General**

The Parties acknowledge the importance of training and employee development to the mission of the Agency and to the morale and wellbeing of the employees. Therefore, the Agency will make available to employees the training necessary for the basic performance of the employees' assigned duties.

A. Subject to budgetary and workload constraints, ARS will provide employees with appropriate job-related training to perform their duties in a safe and efficient manner.

B. ARS will attempt to provide opportunities for employee development and advancement. Workload and funds permitting, support personnel will be encouraged to participate in work-related technical conferences, workshops and seminars.

C. Employees who desire information regarding training opportunities should first consult with their supervisors. If additional assistance is required, the employee may seek it from the second line supervisor.

D. Joint labor management training will be conducted once at each location for all current BUEs and supervisors, within one (1) year of the effective date of this agreement. Training logistics and schedule will be by mutual agreement.

### **Section 1 - Training Not Directly Related To Duties**

The following provisions shall apply to programs or training sessions which may not be directly related to the duties and responsibilities of the position and which are conducted in the respective local commuting areas of the unit locations:

- A. Employees must obtain advance approval from their immediate supervisor to attend such training if the training occurs during scheduled hours of duty.
- B. Supervisors are strongly encouraged to give favorable consideration to such requests, subject to workload and budget.
- C. Programs or training sessions which are covered by this section concern career-related matters, e.g., retirement, EAP, etc.
- D. Training may be provided by ARS or other governmental or not-for-profit entities.
- E. There is no obligation on the part of ARS to seek out all such programs offered in the location.

## **Section 2- Reimbursement of Training Costs**

A. ARS and/or location will pay all approved expenses, including tuition and travel in connection with training required by the Agency, ARS, and/or location to perform the duties of an employee's current position or a position to which an employee has been assigned. ARS and/or location will reimburse employees for all approved travel costs and expenses incurred for taking training required by the Agency, ARS, and/or location consistent with applicable law, rules and regulations.

B. When an employee requests elective training, ARS and/or the location, upon approval of such training, will reimburse authorized expenses for such training, at a facility that ARS and/or the location has approved, when the following conditions have been met:

1. The training has been applied for on an SF-182 (or designated form) and approved in advance;
2. Such training:
  - a. is related to the employee's current position, or
  - b. will improve the employee's ability to perform his/her current job or a job the employee has been selected to fill through merit promotion;
3. Existing training programs within the Agency, ARS, and/or location, will not adequately meet the training need;
4. Establishing a new training program in house to meet the need effectively is not feasible;
5. Reasonable inquiry has failed to disclose the availability of a suitable and adequate program elsewhere in the government; and
6. The approval of such training is in the best interest of the employee and the Agency, ARS, and/or location.

## **Section 3 - Reassignments and New Assignments**

When employees are reassigned to new positions or assigned new duties in connection with their current positions, ARS and/or the location will provide the training necessary to enable employees to perform all required duties.

**Section 4 - Scheduling Training**

When training requests are approved by management, employees will be granted absences from work to attend approved training. Schedule adjustments will be made to accommodate an employee's training or educational program. Training will be completed on duty time.

**Section 5 - Training Information**

The Agency, ARS, and/or the location shall inform employees about required training. This notification shall include training that is required to maintain certifications outlined in the employee's position description that are required to maintain employment.

**Section 6 - Notification**

Employees will be notified of approval or disapproval of training requests prior to the starting date of the training. If the employee is not selected, the reason for disapproval will be provided.

**Section 7 - Union Recommendations**

At any time, the Union may bring to the attention of the appropriate management officials such training needs as it deems necessary for the safe and efficient performance of the duties of employees. These officials agree to give serious consideration to recommendations of the Union.

**ARTICLE 23**  
**EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

**General**

It is agreed between the Parties to cooperate in providing equal opportunity and in preventing discrimination against any employee based on age, sex, race, religion, color, national origin or disability. Furthermore, management agrees to be compliant with associated rules, regulations, laws, policy and procedures.

**Section 1 -EEO Committees**

EEO committees may be established at each location. The committee will meet by mutual agreement. All Union representatives appointed to the committee will be on duty time.

**Section 2 – EEO Program Attendance**

Supervisors are strongly encouraged to invite participation in and approve employee's requests to attend EO/CR activities and programs.

**ARTICLE 24**  
**CHARITIES, CIVIC ORGANIZATIONS, AND PUBLIC WELFARE**

**Section 1 - Charities**

The Parties agree to cooperate in the furtherance of charities sanctioned by the Agency, such as the Combined Federal Campaign. The Parties recognize the voluntary nature of such causes and agree to the furtherance of this principle.

**Section 2 – Organizations**

Employees are encouraged to join and participate in professional and civic organizations as appropriate. Membership in such organizations is recognized to be voluntary.

**Section 3 - Voting**

The Parties agree to mutually encourage employees to exercise their right to register and vote in elections.

**Section 4 - Leave For Emergency Activities**

Employees may be granted administrative leave to participate in emergency rescue or emergency protective work in a civilian capacity during official working hours. Emergency situations include, but are not limited to, extreme weather conditions, or disasters such as fire, flood, or other natural phenomena. Supervisors may grant administrative leave when determining that the leave is for an emergency and is in the interest of the public welfare.

**ARTICLE 25**  
**AUTHORSHIP**

The Parties recognize that the designation of authorship is an issue of scientific ethics. In recognition of the above, the Parties agree that a good faith effort will be made to comply with Research, Education, and Economics (REE), Policies and Procedures (P&P) 152.2-ARS, Authorship of Research and Technical Reports and Publications, dated May 5, 2011.

See Appendix A

## **ARTICLE 26 OFFICIAL RECORDS**

### **Section 1 - Official Records and Files**

No personnel records may be collected, maintained, or retained except in accordance with law, government wide regulations, Agency regulations, and this agreement. All personnel records are confidential and shall be known or viewed by officials only with a legitimate need to know for the performance of their duties; they must be maintained in a secure location.

### **Section 2 - Access to Records**

A. During normal duty hours, employees and/or their representative(s) designated in writing shall have the right to examine records personally identified to the employee (e.g., eOPF, EEO, evidence files, appeal and grievance records), position descriptions, and performance standards. Employees and/or their representative(s) designated in writing may receive copies of personally identified records or documentation. Employees will need to gain supervisory approval prior to leaving the work area to examine their records.

B. The employee shall have the right to prepare and enter a concise statement of disagreement with any document filed in their eOPF. Nothing in this section shall negate an employee's right to grieve any matter.

C. Employees may contact the local HR department for needed assistance in gaining access to their eOPF.

### **Section 3 - Outdated Records**

A. All official personnel records shall be purged and information disposed of in accordance with appropriate records control schedules.

B. Each facility will maintain a system of follow-up to assure that any disciplinary or similar action with a time limit is removed from the employee's eOPF on the proper date.

C. If any outdated or unauthorized material is accidentally left in a file, it may not be used to support any personnel action detrimental to the employee.

### **Section 4 - Supervisory Notes**

A. Individual files on each employee, not approved by the Agency as an official system of record, will not be kept by management officials at any level.

B. Subject to Paragraph C, if supervisors make a personal decision to keep notes on employees, the notes or files:

1. must be absolutely uncirculated; will be viewed only in accordance with official Agency business and/or a need-to-know basis; and
2. must be maintained in secure fashion in order to prevent disclosure.

C. Supervisory notes may only be used to support any action detrimental to an employee if a copy of the notes has been provided to the employee at the earliest available time after a cited incident or event involving the employee. Notes can be provided to an appropriate management official with a legitimate need to know for the performance of their duties.

D. The time frames for retaining supervisory notes will be up to one (1) year, unless used in a personnel action.

E. The employee shall have the right to prepare and enter a concise statement of disagreement with any supervisory note provided to the employee.



**ARTICLE 27**  
**DUES WITHHOLDING**

**Section 1 - Eligibility - Bargaining Unit Employees**

Any BUE may have dues deducted through payroll deductions. Such deductions will be discontinued only when the employee leaves the unit of recognition, ceases to be a member in good standing of AFGE, or submits a timely revocation form under the procedures of this article.

**Section 2 - Union Responsibilities for Bargaining Unit Employees**

A. The Union agrees to inform the Agency, in writing, of the following:

1. The dues amount(s) or changes in the dues amount(s),
2. The names of the Union officials responsible for certifying each employee's authorization form, the amount of dues to be withheld, and changes in allotments, and
3. The name and address of the payee to whom the remittance should be made.
4. The Union agrees to notify dues-paying members of any increases in dues and to advise them of the reasons for the change.

B. The Union agrees to promptly forward completed and certified form(s) to the appropriate administrative office.

**Section 3 - Agency Responsibilities for Bargaining Unit Employees**

A. It is the responsibility of the Agency to:

1. Process voluntary allotments of dues in accordance with this article and in amounts certified by the Union,
2. Withhold employee dues on a bi-weekly basis, and
3. Transmit remittance to the local allottee designated by the Union in accordance with this article, as expeditiously as possible at the end of each pay period, together with two (2) copies of a listing containing the following information:
  - a. Identification of active employees for whom allotments have been temporarily stopped and identification of those which are a final deduction because of termination or transfer.

B. The Agency will process the changes and make them effective no later than three (3) pay periods from notification of the change.

C. Electronic transfer of funds is authorized for the transmittal of union dues.

D. The Agency agrees to withhold union dues from a back pay award granted to an employee who was terminated and was on dues withholding at the time of a termination. The amount withheld from the back pay award will be calculated from the date of termination until the employee's date of reinstatement. Upon their return to duty, the employee will be made whole and will continue status quo in the BU and dues-paying status they were in at the date of termination.

E. The Agency agrees to withhold union dues from a back pay award to an employee who was on dues withholding at the time of a suspension.

#### **Section 4 - Procedures for Withholding for Bargaining Unit Employees**

BUEs wishing to have their dues withheld by payroll deduction will submit their completed SF-1187 (Request for Payroll Deductions for Labor Organization Dues) to the designated Union officials. These officials will certify the form and include the amount of dues to be withheld. The certified SF-1187 will be forwarded to the appropriate administrative office for processing. The deduction will become effective at the beginning of the first pay period that begins three (3) or more workdays after the SF-1187 was submitted to the appropriate administrative office.

#### **Section 5 - Cancelling Dues Withholding**

A. The Union or the local servicing personnel office will provide the appropriate designated form to employees upon request. An employee may cancel dues withholding once per year by submitting the appropriate designated form to the Union.

B. The Union official will determine the anniversary date of the allotment by referring to the original form. The ending date of the pay period in which the first anniversary date occurs will be entered on the form.

C. Employees may discontinue dues withholding after the one (1) year statutory requirement for dues withholding has been met.

D. Employees may rejoin the Union by resubmitting a new form. A new one (1) year statutory period for dues withholding will then be established based on the new signup date.

#### **Section 6 - Continuation of Dues for Bargaining Unit Employees**

A. When an employee is detailed or temporarily promoted out of the BU, union dues withholding will restart automatically when the employee returns to the BU.

B. When an employee is detailed or by other personnel action placed in a BU position, the employee shall have all the rights of the BU, including the right of dues withholding.

C. Any time Agency officials request the appropriate administrative office in writing to discontinue an employee's dues withholdings because the employee has left the unit of recognition (e.g., promotion or reassignment), a copy of such request shall be provided to the Union. Where a dispute arises over whether or not the person has left the unit, the procedures outlined in Section 7 will be used.

**Section 7 - Position Determination**

A. When there is a dispute regarding whether a BU position is "covered by" a BU or not, the employee's dues paying status will continue status quo until the issue is resolved.

B. The Parties will discuss the issue until a decision is reached, either through mutual agreement or the formal clarification of unit petition process.

**Section 8 - Costs**

All payroll deductions and transmittals will be made at no cost to the Union.

**ARTICLE 28**  
**OFFICIAL TIME and DUTY TIME**

**Section 1- Official Time**

Union representatives will be allowed a reasonable amount of official time, when they would otherwise be in a duty status, to perform representational activities. Representational activities are:

- A. attendance at meetings or communication with management concerning personnel policies and practices, working conditions, grievances, Unfair Labor Practices (ULPs), and negotiations;
- B. receiving potential employee grievances or appeals, making appropriate inquiries, organizing information, and presenting grievances or appeals to management;
- C. responding to employee inquiries regarding this agreement;
- D. preparing and presenting third party submissions.

**Section 2 - Duty-Time Activities**

For the following matters, Union representatives will be on duty time:

- 1. All activities relating to Partnership/Labor Management Forum (LMF) and location Labor Management Committees (LMCs),
- 2. For cases in which a Union representative is designated as the employee's representative, preparing or presenting appeals to MSPB.

NOTE: If a Union representative is chosen by an employee to be a personal representative handling discrimination claims under Equal Employment Opportunity Commission (EEOC) procedures the personal representative is entitled to official time (29 CFR, 1614 605 (b)). Union official time is not permitted in this capacity.

**Section 3 -Official Time to Observe**

A Union representative acting as an observer under the provision of 5 U.S.C., 7114(a) (2) will be on official time if otherwise in a duty status.

**Section 4 -Procedures for Using Official Time**

In performing representational activities, the following conditions will apply:

- A. Each designated Union representative will obtain the permission of their supervisor prior to stopping and/or interrupting work to perform any representational activity and will notify their supervisor upon their return or when representational activities are concluded.

- B. The supervisor will release the designated Union representative from duty within a reasonable period of time, except in an emergency situation or where there would be undue interruption of work.
- C. The designated Union representative will advise the supervisor of the employee to be represented upon their arrival and will advise the supervisor of their departure.
- D. The supervisor will make the employee available to the designated Union representative, except in emergency situations or when there would be undue interruption of work.
- E. Management may request the designated Union representative to conduct business at a more appropriate time.

**Section 5 -Recording Use of Official Time, Telephone Calls**

A. Each employee who participates in labor relations activities will ensure that the time spent in these activities will be accurately reflected on their time and attendance reports.

B. Subject to workload requirements, the Union President and the Chief Steward may accept incoming telephone calls concerning labor management matters without obtaining prior approval of their supervisor or any other management official. The Union official will initially estimate the anticipated length of the call. If the official has a reasonable basis for expecting the call to exceed fifteen (15) minutes, they will suspend the conversation until the Union official requests and obtains approval from the immediate supervisor. However, in emergency situations where there is a need for immediate action on the part of the Union official and only when the supervisor is not immediately available after a reasonable attempt to contact them, the Union official may respond to the call prior to receiving supervisory approval. These Union officials will reflect official time used on the timekeeping system. However, calls of less than five (5) minutes duration need not be documented unless more than fifteen (15) minutes in one (1) hour are used for this purpose.

**Section 6 - Performance Evaluation**

The use of official time, in accordance with this agreement, will not adversely affect an employee's performance evaluation.

**ARTICLE 29**  
**LABOR-MANAGEMENT RELATIONS COMMITTEE**

**Purpose**

- A. At the Union's or Agency's request, a joint Labor-Management Relations Committee (LMRC) may be established at each location.
- B. The purpose of the LMRC is to foster a cooperative, constructive working relationship between employees and management. The LMRC will work to establish an atmosphere of mutual respect and trust, and to improve the morale and quality of work life for employees.

**Section 1 - Composition**

Normally, the committee will consist of equal numbers of members representing the Union (Labor) and Management.

**Section 2 -Meetings**

- A. The LMRC will meet monthly or as mutually agreed upon by the members. Meetings will normally be conducted during normal business hours. Union representatives will be on duty time.
- B. Minutes of the meetings will shared on each location's intranet/shared drive. Minutes will be mutually agreed upon prior to posting.

**Section 3 - Other Committees**

By mutual agreement, the Union may appoint at least one (1) bargaining unit employee to represent the Union on each current or newly established location committee that may affect working conditions and that does not involve the budget, mission, organization, or internal management of the location. Union appointed bargaining unit employees who serve on committees will be on duty time.

## **ARTICLE 30 CONTRACTING OUT**

### **Section 1 - General**

A. The provisions of this article concern contracting out of work currently performed by BUEs.

B. The intent of this article is not to impede the day-to-day private sector contracts for work that are currently or likely to be determined to be necessary for limited time periods or for specific work projects, including but not limited to, lack of personnel, lack of specialized skills or equipment, etc.

### **Section 2 - Periodic Briefings**

A. If a decision is made to contract out BU positions, periodic briefings will be held with the Union to provide information concerning any decisions that may impact employees in implementing OMB Circular A-76.

B. Timely briefings will be held with affected employees for the purpose of providing information concerning contracting out under A-76 procedures. The Union will be given an opportunity to attend such employee briefings. The Union representatives will be on official time.

### **Section 3 - Site Visits**

The Agency will notify the Union if a site visit is going to be conducted for potential bidders seeking contracts for work performed by BUEs. A Union representative may attend such a site visit. The Union will be free to participate in the process but will not disrupt the site visit.

### **Section 4 - Union Notification**

When the Agency determines that BU positions will be contracted out, the Agency will notify the Union to provide them an opportunity to request to negotiate as appropriate.

### **Section 5 - Employee Placement**

When permanent employees are adversely affected by a decision to contract out, the Agency will make maximum effort to find available positions for employees.

This effort will include:

1. Giving priority consideration for available positions within the Agency;
2. Utilize InterAgency Career Transition Assistance Program (ICTAP), Career Transition Assistance Program (CTAP);
3. Establishing an employment priority list and a placement program; and

4. Paying reasonable costs for training and relocation that contribute to placement in accordance with Agency regulations.

**Section 6 - Inventory of Contracted Activities**

The Agency will notify the Union of BU positions subject to contracting out. Upon request, a summary copy and/or a completed cost comparison will be made available to the Union.



**ARTICLE 31**  
**REDUCTION IN FORCE (RIF)**

**Section 1 - Purpose**

A. The Agency and the Union recognize that unit employees may be seriously and adversely affected by a RIF, reorganization, or transfer of function action. The Agency and OPM recognize that attrition, reassignment, furlough, hiring freeze, and early retirements are among the alternatives to RIFs that may be available. This article describes the exclusive procedures the Agency will take in the event of a RIF, reorganization, or transfer of function as defined in this article. It is also intended to protect the interests of employees while allowing the Agency to exercise its rights and duties in carrying out the mission of the Agency.

B. Recognizing the potential disruptive impact that a RIF may generate, the Parties agree to use RIFs after careful consideration and utilization when possible, of less invasive tools such as those described above.

**Section 2 - Definition**

For the purpose of this article, the following terms are defined in law and regulations and are included for informational purposes:

A. Reduction-In-Force (RIF)

When the Agency releases a competing employee from his/her competitive level by furlough for more than thirty (30) calendar days, or of more than twenty-two (22) discontinuous workdays, separation, demotion, or reassignment requiring displacement when the release is required because of lack of work, shortage of funds, insufficient personnel ceiling, or reorganization, the exercise of reemployment rights or restoration rights, or reclassification of an employee's position due to erosion of duties when such action will take effect after the Agency has formally announced a RIF in the employee's competitive area and when the RIF will take effect within one hundred eighty (180) days.

B. Transfer of Function

A transfer of function occurs when a function ceases in one competitive area and moves to one or more competitive areas which do not perform the function at the time of the transfer. Also included, the movement of an entire work operation to another commuting area.

C. Reorganization

Reorganization is the planned elimination, addition, or redistribution of functions or duties of an organization or work unit.

#### D. Competitive Area

An area in which employees compete for retention is known as a Competitive Area. A competitive area must be defined solely in terms of the Agency's organizational units and geographical location; and it must include all employees within the competitive area as defined.

#### E. Competitive Level

The Parties agree that OPM regulations fully define competitive level. Employees are assigned to competitive levels based on their position of record. Positions in a competitive area that are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions. The incumbent of one position can successfully perform the critical elements of any other position upon entry, without any loss of productivity beyond what is normally expected in the orientation of any new but fully qualified employee. (The terms competitive level and retention register generally have the same meaning.)

#### F. Retention Register

The retention register is the ranking of employees in the competitive level after the Agency applies the four (4) retention factors. The four (4) retention factors are: tenure of employment, military preference (subject to section 5 CFR, 3501 (a) (3)), length of service, and performance rating. (The terms competitive level and retention register generally have the same meaning.)

#### G. Bump and Retreating

Bumping means the displacing of an employee on a different competitive level who is in a lower tenure group, or in a lower subgroup with the released employee's own tenure group.

Retreating means the displacing of an employee on a different competitive level with less service within the released employee's own tenure group and subgroup.

#### H. Identification Method One and Identification Method Two

Under Identification Method One procedure, the losing competitive area identifies an employee with a transferring function if: the employee performs the function during at least half of the employee's work time: or regardless of the amount of time that the employee performs the function, the function includes the duties controlling the employee's grade or rate of pay.

Under Identification Method Two procedure, the losing competitive area identifies for transfer the number of employees it needs to perform the functions. The losing competitive area uses Identification Method Two only to identify positions and employees not covered by Identification Method One.

### **Section 3. Applicable Laws and Regulations**

For purposes of Title 5 employees, the policy, procedures, and terminology described in this article are to be interpreted in conformance with 5 U.S.C., 3501-3504, 5 CFR, Part 351, and other applicable government-wide laws and regulations. Any changes or revisions to the published procedures will be subject to normal notification and negotiation protocols.

#### **Section 4 - Application**

The Agency agrees to fairly and equitably apply this article and any laws or regulations relating to any matter in this article.

#### **Section 5 - Union Notification**

A. Management officials shall be responsible for properly notifying the Union President or designee in conjunction with any of the actions described in this article.

B. For actions covered by this article, the Agency agrees to notify the Union as described below:

1. Management will notify the Union at the earliest possible date, normally no less than ninety (90) calendar days prior to the effective date.
2. All notices to the Union will be given in writing prior to any notice to affected unit employees.

C. The notice to the Union under this section shall consist, at a minimum, of the following information:

1. The reason for the action;
2. The approximate number, types, and geographic location of position(s) initially affected; and
3. The approximate date of the action.

#### **Section 6 - Freezing of Vacancies**

The Agency will freeze all relevant vacant positions sixty (60) days prior to the effective date of a RIF. The Agency may elect to fill vacancies after the conclusion of the RIF actions initiated during the life of the RIF. When the Agency decides to fill a vacant position(s) after the effective date of the RIF, whether previously frozen by virtue of RIF or in the creation of new vacancies, employees who have been demoted through the application of RIF procedures will be offered the vacancy provided the employee is qualified or has been given a waiver of qualifications for the intended position. Employee entitlement to this special consideration shall be determined in accordance with the Merit Promotion Article 13, of this agreement.

#### **Section 7 - Employee Notification**

An individual employee who is adversely affected by actions stated in this article shall be given a specific written notice not less than sixty (60) calendar days prior to the effective date of the action. All such notices shall contain the information required by the OPM regulations in addition to the information required by this article.

#### **Section 8 - Content of Employee Notices**

The content of the specific notice shall include the following information:

1. The specific action to be taken;
2. The reason for the action;
3. The effective date of action;
4. The employee's competitive area, competitive level, subgroup and service date, and the three (3) most recent ratings of record received during the last four (4) years;
5. The place where the employee may inspect the regulations and records pertinent to his/her case;
6. Information on reemployment rights (except as permitted by 5 CFR, 351.803 (a)); and
7. The employee's grievance or appeal rights.

#### **Section 9 - Employee Information**

The Agency shall provide information and assistance to impacted employees by:

1. Informing all employees of the extent of the affected competitive area, the regulations governing such action, and the kinds of assistance provided to affected employees;
2. Notifying employees of all regular competitive vacancies the Agency wishes to fill by advertising on USAJobs.gov or its successor;
3. Conducting a placement program within the Agency, in accordance with applicable government wide rules/regulations. The placement program will include counseling for employees by qualified personnel on opportunities and alternatives available to affected employee(s).

#### **Section 10 - Personnel Files**

At the written request of an employee, the Union may review any employee's eOPF if the employee believes that the information used to place him/her on the retention register is inaccurate, incomplete, or not in accordance with laws, rules, regulations, and provisions of this article.

### **Section 11 - Records**

A. The Agency will maintain all lists, records, and information pertaining to actions taken under this article for at least one (1) year in accordance with applicable rules and regulations after the date it issues a specific RIF notice.

B. A copy of the retention register will be made available to the Union at the earliest possible time. In addition, the Union is entitled to see employee-requested Agency records that detail their bump and retreat records.

C. An employee who has not received a specific RIF notice has no right to review the Agency's retention registers and related records.

### **Section 12 - Employee Use of Authorized Time and Agency Facilities**

A. Employees who are identified for transfer of function or separation as a result of a RIF under this article shall be entitled to a reasonable amount of duty time (at least forty (40) hours) for:

1. Preparing, revising and reproducing job resumes and/or job application forms;
2. Participating in employment interviews;
3. Using the telephone to locate suitable employment; and
4. Reviewing job bulletins, announcements, etc.

B. Such employees will also be entitled to reasonable use of the following facilities and/or services for the purpose of locating suitable employment: telephone, reproduction equipment, interAgency messenger mail, email, and counseling (EAP).

### **Section 13 - Performance Appraisals**

Annual performance appraisals for purpose of retention standing will be frozen thirty (30) days prior to the issuance of the notice of action. The three (3) latest annual appraisals of record during the four (4) year period prior to the cut-off date for accepting performance ratings will be used to determine eligibility for additional credit toward an employee's service computation date. To be credited under this section, an appraisal must have been issued to the employee with all appropriate reviews and signatures and must be on record.

### **Section 14 - Career Transition Assistance Program and Inter-Agency Career Transition Assistance Program**

A. The Agency will notify employees of the services available under its Career Transition Assistance Program (CTAP) and Inter-Agency Career Transition Assistance Program (ICTAP) and how to obtain them.

B. The Agency will notify eligible employees of their selection priority consideration in USDA and other Federal agencies under the Agency CTAP and ICTAP, if they apply, and are found to be well qualified.

### **Section 15 - Employee Response to Specific Notice**

Upon receipt of specific notice notifying the employee that he/she is offered a reassignment or change to lower grade or will be released from his/her competitive level, the employee shall have seven (7) calendar days in which to accept or reject the offer made. If a position with a higher representative rate or grade (but not higher than the rate or grade of the employee's current position) becomes available on or before the effective date of the RIF, the Agency will make the better offer to the employee. However, making the better offer will not extend the sixty (60) day notice period.

### **Section 16 - Displaced Employees**

The Agency shall provide any employee to be separated by RIF or transfer of function with the appropriate contact information regarding unemployment benefits available to them.

### **Section 17 - Details**

Employees on detail will not be released during a RIF from the position to which they are detailed but, rather, from the affected employee's permanent position of record.

### **Section 18 - Transfer of Function**

This section only applies when a transfer of function is used.

A. When a transfer of function occurs, the Agency will first solicit qualified volunteers for transfer from among those employees in positions that have been identified for transfer only if no competing employee who is identified under Identification Method One or Identification Method Two will be separated or demoted solely because a volunteer transferred to the gaining competitive area. If there are not enough qualified volunteers from among these affected employees, the Agency will solicit qualified volunteers from the competitive area.

B. If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area may give preference to the volunteers with the highest retention standing, or make selections based on other appropriate criteria.

In the event there are not enough volunteers for the transfer, the Agency will identify employees for transfer according to Identification Method One and/or Identification Method Two.

C. Whenever possible, affected employees who do not volunteer to be transferred shall be reassigned to vacant positions within the competitive area for which the employee is qualified and which the Agency has determined to fill.

### **Section 19 - Re-promotion Rights of Affected Employees**

For a period of two (2) years from the date of demotion, affected employees demoted by an action covered by this article will be re-promoted to vacancies as they occur according to the following criteria:

1. The Agency determines to fill the vacancy;
2. The employee has the requisite skills and abilities for the position without undue interruption; and,
3. Another qualified employee does not have a higher retention standing.

**Section 20 - Re-employment Priority Rights of Affected Employees**

A. The Agency will inform employees of their right and responsibility to complete a re-employment application. The Agency will provide the employee with a point of contact for personal assistance with the re-employment application.

B. Career and career-conditional employees who have received a specific RIF separation notice or a Certificate of Expected Separation and who submit a complete Re-employment Priority List (RPL) application to Human Resources will be entered on the USDA RPL for the commuting area in which they are qualified and available. Agency components must use the RPL in filling vacancies before offering employment to an individual from inside or outside the Agency, unless it meets one of the exceptions in 5 CFR, 330.211. Employees may remain on the list for two (2) years from the date of RIF separation unless removed earlier based on the occurrence of one of the events in 5 CFR, 330.208.

**ARTICLE 32  
MID TERM BARGAINING**

**General**

ARS will follow the procedures of this section prior to implementing any proposed changes to established personnel policies and practices and other matters affecting the working conditions of employees in the unit, including past practices that are not enumerated in the Agreement.

**Section 1- Procedures for Negotiating During the Term of the Agreement**

A. Either party may propose changes in conditions of employment during the life of the agreement which are not already covered specifically by the agreement. The initiating party will provide the other party with reasonable advance written notice, not less than ten (10) business days prior to the proposed implementation date, of any change affecting conditions of employment.

B. The notice will, at a minimum, contain the following information:

1. A detailed description of the change;
2. An explanation of the initiating party's plans for implementing the change, and a description why the change is necessary (if known); and
3. The proposed implementation date.

C. Employer notices of change(s) will be sent to the Union President or designee and any request to bargain and/or written proposals from the Union will be sent to the CD/RL, or their designee, and LRO or designee.

D. Either party may request to be briefed on the proposed change(s) prior to the submission of the demand to bargain notice.

1. The receiving party will review the proposal and may respond to the initiating party in the following ways:
  - a. If the receiving party wishes additional information or an explanation of the proposal, that party may, within five (5) business days of receipt of the notice, make a written request for a briefing (informal discussion) by the initiating party, and/or for additional information, in order to clarify or determine the impact of the proposed change; or
  - b. If the receiving party wishes to negotiate over any aspect of the proposed change, it shall notify the other party by submitting a demand to bargain within ten (10) business days of receipt of the notice. Proposals will follow within ten (10) business days after the demand to bargain is submitted. If the initiating party is unable to meet within the prescribed time frames the timelines can be extended.



c. Upon request by the receiving party, the Parties will meet (the preferred meeting will be face-to-face but teleconference or other technologies may be utilized) and negotiate in good faith through appropriate representatives for the purpose of collective bargaining as required by law and this agreement.

d. Following this request to negotiate, the Parties will schedule a meeting to begin negotiations as soon as possible, normally no later than fifteen (15) business days from the receipt of the receiving party's proposal. Implementation shall be postponed to allow for the completion of bargaining, up to and including negotiability disputes and/or impasse proceedings, except as required by law.

e. An emergency is an unforeseen combination of circumstances or the resulting state that calls for immediate action. In the case of an emergency, management will notify the exclusive representative prior to meeting with employees, and will meet their bargaining obligation. The Union understands that, under rare and extraordinary circumstances, delayed notification and post-implementation bargaining may be necessary.

## **ARTICLE 33 DURATION**

### **Section 1 -Duration of Agreement**

A. The effective date of this agreement shall be the date of approval by the Director, Office of Human Resources Management (OHRM), Office of the Secretary of Agriculture, or on the 31<sup>st</sup> day after execution of the agreement, if the Director or designee has neither approved nor disapproved the agreement.

B. The duration of this agreement will be for a period of five (5) years from its effective date. It will remain in effect for yearly periods thereafter, automatically renewing on the anniversary date of the original effective date unless either party serves written notice of its desire to terminate or modify this agreement. Either party may give written notice to the other not more than one hundred and five (105) or less than sixty (60) calendar days prior to the expiration date and each subsequent expiration date for the purpose of renegotiating this agreement.

### **Section 2 -Renewal**

A. Pursuant to section B. of this article, the Parties shall meet within ninety (90) calendar days of the receipt of notice to terminate or modify the agreement. Upon notification the Parties agree the agreement will be extended until the effective date of the modified agreement.

B. The current agreement shall remain in effect until the new agreement is executed.

C. The Parties agree to establish written ground rules for the negotiation process.

# Appendix A

United States Department of Agriculture  
Research, Education, and Economics

## ARS □ ERS □ NASS □ NIFA

### *Policies and Procedures*

**Title:** Authorship of Research and Technical Reports and Publications

**Number:** 152.2-ARS

**Date:** May 5, 2011

**Originating Office:** Office of the Administrator, ARS

**This Replaces:** 152.2-ARS dated 5/12/1997

**Distribution:** ARS Headquarters, Areas, and Locations

This Policy and Procedure describes the criteria to be used for consideration of authorship of research publications.

Publication of research reports is often the end product of many research activities and is the foundation of scientific inquiry. The purpose of the P&P is to provide guidance for who should be considered as an author on publications that involve ARS employees.

## **2. Background**

Authority to approve authorship resides with the Research Leader.

The Research Leader may require authors to justify the assignment of authorship, by explaining how each individual participated in the activities described by the guidelines for authorship.

Any person who, in the judgment of the Research Leader, meets the guidelines for authorship, and who wishes to be listed as an author, cannot ethically be denied authorship.

## **3. Policy**

The question of who should be an author is fundamentally an issue of scientific ethics. Each author must have participated sufficiently in the work to take public responsibility for the content of the article. This participation must include:

- execution and conception or design; or analysis and interpretation; and,
- drafting the article or revising it for critically important intellectual content; and,
- final approval of the version to be published.

All elements of an article critical to the main conclusions must be attributable to at least one author. The order of names on a multi-authored article will be decided by the group responsible for the research.

Participation solely in the collection or summarization of data does not justify authorship. The issue of "credit" for performance evaluation or the Research Position Evaluation System (RPES) relates to actual role rather than order of names, and is a separate issue beyond the scope of this P&P.

All individuals to be listed as authors, regardless of the classification of their positions, or other affiliation, must meet these authorship guidelines.

Persons who have contributed to the paper and whose contributions do not justify authorship may be named and their contribution described—for example, "advice," "critical review of study proposal," "data collection." Such persons must give their permission to be named.

At an appropriate place in the article one or more statements should specify (if allowed by the policy of the publication):

- contributions that need acknowledgment but do not justify authorship;

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EDWARD B. KNIPLING  
Administrator  
Agricultural Research Service

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Date

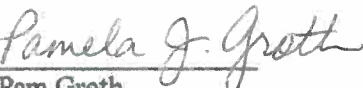
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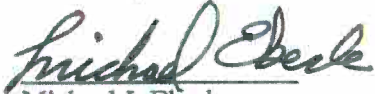
  
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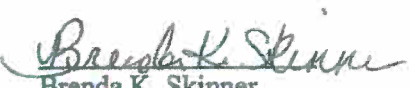
  
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11/8/17  
Date

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Agency Head Review was served on this day, November 9, 2017, to the following parties regarding the renegotiated CBA between ARS, Plains and AFGE Local 3748:

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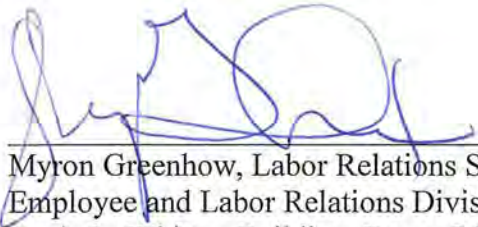
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