

**LABOR-MANAGEMENT AGREEMENT**

**BETWEEN THE**

**FEDERAL GRAIN INSPECTION SERVICE**

**AND THE**

**NATIONAL COUNCIL OF FEDERAL GRAIN  
INSPECTION LOCALS  
AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES (AFL-CIO)**

Effective Date: October 3, 2022



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# **ARTICLE 1: RECOGNITION**

## **Section 1. The Parties**

This Agreement is made and entered into by and between the Federal Grain Inspection Service (FGIS), U.S. Department of Agriculture, hereinafter referred to as “Management,” “Agency,” or “FGIS,” and the National Council of Federal Grain Inspection Locals, American Federation of Government Employees (AFL-CIO), hereinafter referred to as the “Union” and collectively known as the “Parties.”

## **Section 2. Unit Definition**

Management hereby recognizes the Union under the provisions of Chapter 71 of Title 5 of the United States Code as the sole and exclusive representative for all employees in the unit which is defined as follows:

All employees in the Field Offices of the FGIS, USDA, nationwide, excluding professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors.

## **ARTICLE 2: LAWS AND GOVERNING REGULATIONS**

### **Section 1**

In the administration of all matters covered by this Agreement, officials and employees are governed by existing or future laws; existing Government-wide regulations and future Government-wide regulations not in conflict with this Agreement; and by published Department/Agency regulations in existence at the time this Agreement is approved, which do not conflict with or detract from the Agreement or supplements thereto and subsequently published Department/Agency regulations subject to the conditions described below.

When FGIS implements any regulations not in conflict with this Agreement or Supplemental Agreements, such regulation will be implemented with due regard for the Union's right to bargain pursuant to the Federal Service Labor-Management Relations Statute (Statute) in 5 USC 71. It is understood that the duty to bargain in good faith extends to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, and to Department regulations only if the Federal Labor Relations Authority (FLRA) has determined that no compelling need exists for the rule or regulation.

Where provisions of future rules or regulations are in conflict with this Agreement, or Supplemental Agreements, the provisions of the Agreement shall govern until such time as the Agreement is renegotiated.

The Agency agrees not to enforce in the bargaining unit any future regulation which conflicts with the Agreement or Supplemental Agreement without being mandated by law.

Management will notify the Union after receipt of notice of a required change. Upon receipt of such notification from Management, the Union may, within 20 calendar days, request negotiation to the extent permitted under the Statute.

## **Section 2. Management Rights**

(A) Subject to subsection (B) of this section, nothing in this Agreement shall affect the authority of any management official of the Agency:

- (1) To determine the mission, budget, organization, number of employees and internal security practices of the Agency.
  - (2) In accordance with applicable law:
    - (a) To hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay or 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 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.
      - (ii) Any other appropriate source.
    - (d) To take whatever actions may be necessary to carry out the Agency mission during emergencies.
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(B) Nothing in this Agreement shall preclude any Agency and any labor organization from negotiating:

- (1) At the election of the Agency, on the numbers, types, and 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.
- (3) Appropriate arrangements for employees adversely affected by the exercise of any authority under this Section by such management officials.

### **Section 3. Obligation to Meet and Confer**

In prescribing Agency or implementing Department regulations relating to personnel policies and practices and matters affecting working conditions, management shall have due regard for the obligation to meet and confer with the Union.

## **ARTICLE 3: HEALTH BENEFITS**

### **Section 1. Notice of Deduction Cessation**

Whenever an employee's payment of health benefit premiums ceases due to non-pay status, the Human Resources (HR) Department will provide the employee with a notice, "Health Benefits Premiums During Non-pay Status." Employees are to sign the notice and return it to HR. HR will forward the signed notice for inclusion in the employee's Official Personnel Folder (OPF). In addition, the employee will be allowed the options provided in this Article.

### **Section 2. Payments**

(1) Employees who wish to make payment of health benefit premiums can contact the National Finance Center (NFC) or the HR department for the proper procedures.

### **Section 3**

FGIS agrees to promptly apply for a refund to the employee of any premium amounts which were erroneously paid or collected.

### **Section 4**

The Agency will distribute to the Union notices of changes in coverage or deductible amounts of health plans where the Office of Personnel Management (OPM) provides the notices to the Agency.

## **ARTICLE 4: EMPLOYEE RIGHTS**

### **Section 1. General**

Each employee has the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity.

### **Section 2. Right to Representation**

A Union representative may be present at any examination of a bargaining unit employee by his or her supervisor and/or other management official in connection with a discussion that may result in disciplinary action. Prior to any such discussion, management will inform the employee that the topic of discussion may involve disciplinary action or potential disciplinary action. If the employee reasonably believes that the examination may result in disciplinary action, the employee may request a Union representative. Management will annually inform employees of the right to have a Union representative at examinations which they feel may reasonably result in disciplinary action. Should the employee request representation, the supervisor or other management official will honor the request, and the meeting will be held or rescheduled within a reasonable period of time when a Union representative can be present.

### **Section 3. Files**

The FGIS will maintain information on employees in the OPF or an office file maintained by the immediate supervisor.

## **Section 4**

Supervisors will timely provide employees copies of documents affecting the employee which the field office initiates or which are maintained by the field office unless furnishing the information would be in conflict with government-wide law or regulation.

## **Section 5. Voluntary Programs**

Employees will not be required to participate in voluntary programs such as the Combined Federal Campaign, savings bonds, and employee association activities. Oral presentation of such program will not state or imply that such participation is expected or mandatory. The Union will be given the opportunity to be present at oral presentations.

## **ARTICLE 5: UNION RIGHTS**

### **Section 1**

The labor organization shall be given the opportunity to be represented at any formal discussion between Management and unit employee(s) or employee representatives concerning any grievances, personnel policies or practices, or other matters affecting conditions of employment.

### **Section 2**

Upon request, FGIS will promptly furnish information to the Union which is available and necessary for the Union to perform representational activities; provided that such disclosure would not violate applicable laws. When disclosure can be made only if the material is sanitized, the FGIS will provide the information in that form. In disciplinary and adverse actions, the employer will provide an extra copy of any correspondence issued to an employee to provide to the Union.

## **ARTICLE 6: COMMUNICATIONS**

### **Section 1. National**

Communications at the level of exclusive recognition shall be between the President or alternate of the Union and the Deputy Administrator or alternate of the FGIS, except as provided for by the grievance procedure.

### **Section 2. Notification**

FGIS will notify the Union in writing of Agency initiated changes to conditions of employment at least 30 days in advance of the proposed effective date of the change. For changes initiated by higher authority than the Agency, 30 days notification will be provided unless the change has a required implementation date necessitating a shorter notice. The Agency will make every effort to assure the Union is notified as promptly as possible and agrees to meet requirements of 5 USC 7117.

For a change occurring within a single Area, the notice shall be given to the Area representative for that area; for changes affecting unit employees in more than one area or unit-wide, the notice shall be given to the Council President. These time frames do not apply where different periods are provided in the Agreement. Nothing shall preclude further delegations by the Area representative.

It is understood the time frames provided in this section do not negate the provisions of the Statute relative to the duty to bargain or the right to exercise the respective rights under that Title.

### **Section 3. Field Office**

Communications at the Field Office level shall be between the Local President or alternate and the Field Office Manager except as provided for by the grievance procedure.

### **Section 4. Designation of Representatives**

The Union shall provide the names of its designated officers and Area Representatives to the National Office of FGIS and the FGIS Labor Relations Officer (LRO). Each Area representative shall provide the names of those local Union representatives within the Area to the Field Management Division Director (FMDD) and the LRO.

### **Section 5**

FGIS agrees to distribute informational issuances, etc. to employees through interoffice mail distribution procedures.

## **ARTICLE 7: REPRESENTATION**

### **Section 1**

The parties acknowledge the right of bargaining unit members at all locations to have access to Union representation. The following sections provide the procedures for representation activities on official time other than bargaining. Employees will contact the Union representative nearest the employee's location unless the representative is not available. In that case, the Area representative may be contacted.

### **Section 2**

For locations where there is an on-site Union representative, the following provisions will apply.

#### *General*

Union officers identified in Article 6 or alternate representatives appointed by them may request authorized official time as necessary to perform the following:

- (1) Attend meetings with supervisors or other management officials to discuss matters of mutual interest and concern as provided for in this Agreement.
- (2) Investigate, prepare and present grievances, appeals, or complaints.
- (3) Attend hearings or third party proceedings wherein the representative is acting on behalf of the employee or the Union.

### *Authorization*

Employees acting as representatives in Section 1 above shall inform their supervisor of their intended involvement and request official time to perform the duties. The requested time will be approved unless the needs of the Agency cannot be met, in which case other mutually agreeable arrangements will be made.

### *Official Time and Expenses*

Upon request, the Agency shall provide reasonable official time for representational duties including, but not limited to, investigation, preparation and presentation of grievance and arbitration cases. A Union representative desiring official time for these Purposes shall notify his or her supervisor and shall inform the supervisor of the nature of the representational duty, the names and locations of the employees involved and the estimated time required. Supervisors shall keep appropriate records of the time consumed by Union representatives in performing representational duties on official time.

### *Recordkeeping*

Each Union representative or unit employee authorized to be on official time for representational functions shall record the time in the official time and attendance system.

## Section 3

Geographic areas shall be established with a Union representative or designee authorized to represent employees within a respective area.

- (A) In instances where there is no on-site Union representative available, the employee will be authorized, upon request, to contact the Area Representative by telephone to discuss concerns relating to conditions of employment such as grievances, performance ratings, personnel regulations, etc. The Area Representative will first attempt to complete the representational activity without traveling.
- (B) If travel is necessary, Area Representatives may request a reasonable amount of official time for representation duties from their supervisor. The request shall include the general nature of the representational duty, the names and location of the employee(s) involved, and the estimated time required. The requested time shall be approved unless the current work needs of the Agency cannot be met, in which case mutually agreeable arrangements will be made to approve the request as soon as possible. Each Union representative or unit employee authorized to be on official time for the representational activity shall record the item involved in the official time and attendance system. In addition, travel expenses for participation in FLRA proceedings shall be authorized in accordance with 5 CFR 2429.13.

## **Section 4**

- (A) In the conduct of Agency operations, supervisors will continue to deal directly with on-site Union representatives or designees.
  
- (B) At Field Offices where Union representatives are not available, supervisors will notify the Area Representative of proposed changes in conditions of employment. A reasonable amount of official time will be provided for the Area Representative to consult with employees of the Field Office. Office phones will be available for this purpose and for responding to employee inquiries.

## **ARTICLE 8: USE OF OFFICIAL FACILITIES**

### **Section 1. Bulletin Boards**

Where the Agency has existing official bulletin boards, space will be made available to the Union for postings which relate to Union activities or other labor-management relations material. The Union agrees not to post scurrilous or libelous literature or material.

### **Section 2. Meeting Rooms**

Where Government owned or leased space is available, it will be provided to the local Unions for a meeting space before or after working hours, provided there is an advance request to the local Field Office Manager and the Manager determines such use will not conflict with the performance of official functions, and where no questions of security of government files and records would result, and where no additional expense would accrue to the government. The Union is responsible for exercising care in the use of such facilities. Local Field Office Managers will provide as much privacy as feasible to the Union for purposes of authorized discussions on grievances with employees of the bargaining unit.

Upon advance notice, the Agency agrees to provide the National Officers with a meeting room, if available, in the National Office when they are meeting with Management.

### **Section 3. FTS Telephone**

Union officers and representatives shall have access to the Federal Telecommunications Systems (FTS) for the conduct of labor-management relations business (matters of mutual interest to the Management and the Union), but not for internal Union business. Management will provide the National Officers with access to the FTS for the conduct of labor-management relations business during the time they are meeting in the National Office.

## **ARTICLE 9: DISCIPLINARY ACTIONS**

### **Section 1. General**

A disciplinary action, for the purpose of this Article, is defined as an oral admonishment, confirmed in writing, an official letter of reprimand, or a suspension for 14 calendar days or less.

No bargaining unit employee will be the subject of a disciplinary action except for just cause as will promote the efficiency of the Agency.

### **Section 2. Procedures for Suspension**

When management proposes to suspend an employee for 14 calendar days or less, the following procedures will apply:

The employee will be allowed 14 calendar days to respond to the proposal. The notice must state the specific reasons for the proposed action and inform the employee of his or her right to: (1) respond personally and/or in writing; (2) be represented by the Union; and (3) furnish affidavits, and other documentary evidence in support of the answer. The employee may file a written response and/or make a request for an oral response to the proposal prior to the end of the 14 calendar day notice period.

If the employee responds, consideration will be given to the employee's answer(s). Barring unusual circumstances, Management will issue a written decision within 30 calendar days after the employee responds or after expiration of the time limit to respond. The employee will be notified of the reasons, should a delay be necessary. The written decision will include a statement of the employee's appeal and/or grievance rights.

### **Section 3. Appeal Rights**

An employee who is dissatisfied with the disciplinary action may file a grievance pursuant to Article 13 of this Agreement. The arbitrator's decision will be in accordance with the provisions of Article 14.

### **Section 4. Evidence**

Management will furnish a copy, or assemble and make available all the materials relied on to support the reasons for the proposed disciplinary action to the employee for his or her review.

Evidence which Management is not permitted to divulge to an employee under the Privacy Act will not be used against the employee.

# ARTICLE 10: ADVERSE ACTION

## Section 1. General

An adverse action for the purposes of this article is defined as:

- (1) A removal
- (2) A reduction in grade
- (3) A suspension for more than 14 days
- (4) A reduction in pay
- (5) A furlough of 30 days or less

This Article is not intended to cover any matter which is excluded from coverage under 5 USC 7512. The Agency may take adverse action under this Article in a fair and equitable manner and only for such cause as will promote the efficiency of the service.

Adverse actions will be conducted in accordance with applicable law and government-wide regulations.

In all cases of proposed adverse action except for emergency furlough actions, or where there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, the employee will be given 30 calendar days advance written notice stating the specific reasons for the proposed action. The employee will be given the opportunity to respond orally and/or in writing to the reasons for the action prior to a decision. The response may include written statements of persons having relevant information. The employee will be provided 14 calendar days to respond.

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### **Section 3. Material for Review**

Management will furnish a copy, or assemble and make available to the employee for his or her review, all the materials relied on to support the reasons in the advance notice of proposed adverse action.

### **Section 4. Notice of Decision**

An official who sustains the proposed reasons against an employee in an adverse action will set forth his or her findings with respect to each reason and specification against the employee in his or her notice of decision.

### **Section 5. Appeals**

An employee has the option of initiating a grievance through the negotiated grievance procedure or filing an appeal with the Merit Systems Protection Board, but not both.

### **Section 6**

An adverse action taken because of employee misconduct must be supported by the preponderance of the evidence.

# **ARTICLE 11: PERFORMANCE APPRAISALS**

## **Section 1**

Employees in the bargaining unit will be evaluated on an annual basis under the current Agency performance appraisal system. Each employee will be informed of the performance standards and critical elements of the employee's position. Performance standards and critical elements shall be in accordance with EEOC guidelines and OPM prescribing directives. Performance standards will be applied in a fair and equitable manner.

## **Section 2. Unacceptable Performance and Advance Notice**

For purposes of this Section, employee is as defined in Section 4301 of the Civil Service Reform Act of 1978. In accordance with 5 CFR 432.104, when employees are alleged to be performing at an unacceptable level, they will be notified in writing of their unacceptable performance in one or more of their critical elements and what action(s) must be taken by them to improve their performance to an acceptable level. The Parties agree that employees will be given 45 consecutive calendar days in their respective Field Office in which to bring their performance up to an acceptable level. This provision shall remain in effect unless guidance from the Office of Personnel Management (OPM) establishes a period in excess of that provided above. In that event,. the period established by OPM shall be substituted. At the end of the 45 consecutive calendar day period, employees will be reevaluated and informed in writing of their performance.

If the performance has not improved and further action is necessary, the employer will give the employee a written notice of the proposed action setting forth in detail the basis for the action. Such notices will be given to the employee 30 days in advance of the proposed action. Employees will have 10 calendar days in which to respond to the proposed action.

### **Section 3. Extension of Advance Notice**

Extensions of the advance notice period and period for replying to a notice of proposed action or grieving a notice of final decision may be requested in writing by an employee or his or her designated representative. Specific justification for the request must be included so that Management may determine whether an extension is justified.

### **Section 4. Supporting Information**

In no case may the decision to take action be based on matters not stated in the proposed notice. Any action to reduce in grade or remove an employee must be supported by substantial evidence.

# **ARTICLE 12: GSA VEHICLES OR LEASED VEHICLES**

## **Section 1. Assignment of GSA Vehicles or Leased Vehicles**

Employees may be assigned GSA vehicles or leased vehicles in accordance with GSA usage objectives.

On a trip basis, GSA or leased vehicles may be made available by the supervisor to those employees who do not wish to drive their privately owned vehicle (POV) and are required to travel on official business, and/or there is no public transportation available, or when an employee is required to carry heavy and/or bulky equipment for the performance of his or her job. The supervisor is not authorized to make available a GSA or leased vehicle on an indefinite assignment.

It is agreed and understood that no employee shall be required to provide a POV for use on Agency business or to maintain a POV as a condition of employment unless otherwise stated in his or her job description, or job announcement.

## **Section 2. Use of GSA Vehicles**

In accordance with GSA requirements that Government-owned or leased vehicles be used only for official purposes, vehicles assigned to employees, on a specific trip basis may be parked at or near the employees residence during non-duty hours only if the employee is required by his or her supervisor to travel to a temporary duty post in the morning or return home at night without first reporting to his or her duty station, and/or the supervisor has determined that it is more advantageous to the Government to do so.

In such event the supervisor will give the employee prior written approval to park the government-owned or leased vehicle at or near his or her residence during non-duty hours. The employee shall also maintain a record which will show the circumstances that made such storage necessary. The record should include dates, itinerary, hours of use of the vehicle, and arrival and departure times at residence. The employee and the supervisor shall sign the record and file it in the office where the employee is headquartered.

In accordance with GSA requirements that government-owned or leased vehicles be used only for official purposes, vehicles assigned to employees on a regular basis may be parked at or near the employee's residence during non-duty hours only if Form AD-728 "Request and Authorization to Store Government-Owned or Leased Vehicle at or Near Residence," is approved.

### **Section 3. Unsafe Vehicles**

Any GSA vehicle or leased vehicle which is reported to be unsafe by the operator shall be returned immediately to GSA or to the leasing company (or such facility contacted for instructions) for repair or replacement. If the vehicle cannot be repaired or replaced, the employee will, as soon as practicable, provide the supervisor with an estimate of the situation and obtain appropriate instructions. The Agency will make every possible effort to assure their GSA vehicle will be equipped with individual seats and seat belts.

# **ARTICLE 13: GRIEVANCE PROCEDURE**

## **Section 1. Purpose and Coverage**

The purpose of this Article is to provide a mutually acceptable method for prompt and equitable settlements of grievances. A grievance may be filed by an employee, a group of employees or the Union.

## **Section 2. Scope**

A grievance means any complaint relating to:

- (1) Any matter involving the interpretation, application, or violation of this Agreement.
- (2) Matters involving the personnel policies, practices and conditions affecting the employees of the bargaining unit.
- (3) Any claimed violation, misinterpretation or misapplication of any Agency or Departmental rule or regulation affecting conditions of employment.

### **Section 3. Exclusions**

This grievance procedure shall not apply to:

- (1) Any claimed violation of Subchapter III of Chapter 73 of Title 5 (relating to prohibited political activities).
- (2) Retirement, life insurance, or health insurance; this does not preclude an employee, the Union, or the employees from grieving alleged violations of Article 3 (Health Benefits), if the grievance does not violate the statutory grievance exclusion of this subsection.
- (3) A suspension or removal under section 7532 of Title 5.
- (4) Any examination, certification, or appointment.
- (5) The classification of any position which does not result in the reduction in grade or pay of an employee.

Where an employee has an option to contest a matter under 5 USC 7121 or this procedure, the parties recognize the applicable provisions of 7121(d), (e), and (f). For purposes of this procedure, 5 USC 7121(d), (e), (f) is incorporated into this Article.

## **Section 4. Grievability**

In the event that Management determines a complaint to be nongrievable, the matter shall be referred to the Deputy Administrator for decision. If the matter is concluded to be nongrievable, the reasons will be transmitted in writing to the grievant and/or the Union. The Union may file the dispute to arbitration, with the arbitrator determining grievability as a threshold issue. Such decisions are appealable only to the Federal Labor Relations Authority in accordance with the regulations of the Authority.

Bargaining unit employees filing a grievance under this procedure may be represented only in accordance with 5 USC 7114(a)(5) (A) or by a designated Union representative. When an employee elects Union representation, all meetings, communications, and attempts at resolution shall be made through the designated Union representative. The Union has the right to be present during the proceedings of all grievances.

## **Section 5. Grievance Process**

### **Step 1**

Employees are encouraged to discuss any concerns with his or her supervisors. Grievances, however, shall be filed in writing with the Field Office Manager (FOM) within 15 workdays after the occurrence of the event on which the grievance is based, or if later, within 15 days from the date the employee became aware of the event giving rise to the grievance; in these cases, the employee will be expected to state why the delay occurred.

Such grievances will be accepted as timely unless the explanation for the delay is not reasonable. Determinations on reasonableness are subject to final decision of the arbitrator, if arbitration is involved. The grievance must be sufficiently detailed to permit consideration and must state the requested corrective action. The FOM shall provide a written decision within 10 workdays after the receipt of the written grievance.

### **Step 2**

If the answer of the FOM does not satisfy the complaint, the grievance may be referred within 18 calendar days in writing to the Field Management Division Director (FMDD). The grievance shall include a copy of the previous step decision and other related materials (for example, charts, diagrams, documents, etc.). The FMDD shall have 20 calendar days in which to provide the written answer.

### **Step 3**

If the FMDD does not satisfy the complaint, the grievance may be referred within 14 calendar days in writing to the Deputy Administrator. The grievance shall include a copy of the previous step decision and other materials (e.g. charts, diagrams, documents, etc.). The Deputy Administrator shall have 30 calendar days in which to provide the written answer. Upon receipt of the Deputy Administrator's answer the Union may, within 30 calendar days, invoke arbitration as provided for in this Agreement.

## **Section 6. Timeframe**

Time limits at any step of the grievance procedure may be extended by mutual consent. Failure of the Employer to render a decision on the grievance within the stated time limits, without any mutual consent to an extension, shall be cause for the grievant or Union to pursue a decision on the grievance at the next step, including the invocation of arbitration. Likewise, failure of the grievant or Union to pursue a decision on the grievance within the prescribed time limits shall be grounds for the grievance to be rejected unless (1) the parties agreed to an extension, or (2) the grievant or Union could not reasonably have been expected to meet the time limits. Disputes over the timeliness of grievances are subject to arbitration.

## **ARTICLE 14: ARBITRATION**

### **Section 1. Selection of Arbitrator**

When arbitration is invoked by the Union under any of the appropriate provisions of this Agreement, Management shall, within 10 workdays from receipt of the request for arbitration, request the Federal Mediation and Conciliation Service (FMCS) to provide a list of 5 arbitrators with copies to each of the Parties.

Within 5 workdays from receipt of the list from FMCS, the Parties shall confer as appropriate to choose an arbitrator. The Parties will alternately strike one name from the list until only one name remains.

The party striking first shall be determined by a flip of the coin. The remaining name on the list shall be the duly selected arbitrator. The FMCS shall be empowered to make a direct designation of an arbitrator to hear the case in the event:

- (1) Either party refuses to participate in the selection of an arbitrator; and/or
- (2) Upon inaction or unreasonable delay on the part of either party.

### **Section 2. Cost of Arbitrator Fees and Travel Expenses**

The Parties agree to share equally the cost of regular fees, including reasonable travel expenses and reasonable research expense of an arbitrator selected and assigned to a case.

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### **Section 3. Arbitrator Scheduling**

The arbitrator will be requested to schedule the hearing for the earliest date the arbitrator is available, but not sooner than 15 calendar days after the selection. Any subsequent conflicts involving the date of the hearing shall be resolved by the arbitrator. The hearing will be held, if possible, on the employer's premises during the regular day shift hours of the basic workweek.

### **Section 4. Official Time and Expenses**

Official time shall be granted to bargaining unit employees acting as the representative for employees or the Union. Official time shall be granted to bargaining unit employees who testify as witnesses. Official time for witnesses shall be limited to the time needed to travel to and from the proceeding and testify. Official time shall be provided by the Employer for Union representatives within the Area involved and all witnesses deemed necessary by mutual agreement of the Parties. If the Parties cannot agree that a witness is necessary, the matter shall be submitted to the arbitrator, whose decision shall be final and binding. Witnesses determined to be necessary by the arbitrator shall be compensated pursuant to that expressed above. Travel time and expenses and official time are not authorized for expert advisors or observers.

## **Section 5. Participants**

The Parties agree to exchange a list of the individuals who will be in attendance at the proceeding. The list shall indicate in what capacity the individual is attending the proceeding; representative, witness, expert advisor, or observer. These lists will be exchanged at least five (5) working days prior to the date of hearing. It is understood that there is a reasonable expectancy that the witnesses will be called to testify and will not be present merely as observers.

## **Section 6. Transcripts and Briefs**

Either party may record the proceedings. A copy of the transcript shall be provided to the arbitrator by the party purchasing the transcript. Either party may submit a post-hearing brief within 15 working days after the close of the hearing, or if a transcript is made by either party, within 15 working days after receipt of the transcript.

## **Section 7. Arbitration Award**

The Parties shall endeavor, whenever possible, to stipulate the facts involved in a case prior to the opening of the arbitration hearing. The arbitrator shall render and serve his or her written award on the Parties to this Agreement within 30 calendar days after the due date for post-hearing briefs.

## **Section 8. Authority of Arbitrator**

The arbitrator's decisions will be final and binding; however, the Parties reserve the right to take exceptions to any award by referral to the Federal Labor Relations Authority in accordance with its rules and regulations.

## **Section 9. Grievability/Arbitrability Decisions**

The arbitrator shall have the authority to make all grievability and/or arbitrability determinations prior to addressing the merits of the original grievance.

## **Section 10. Extension of Time Limits**

Time limits in this Article may be extended by mutual written consent of the Parties.

## **Section 11. Modification of Procedures**

The Parties at any step may mutually agree in writing to waive that step of this procedure.

Any such mutual agreements to modify must be transmitted with the grievance to higher levels.

## **Section 12. Expedited Arbitration**

The following expedited arbitration procedures may be used to resolve any grievance which involves: (1) performance appraisal, other than actions involving unacceptable performance under 5 USC 4303; (2) discipline up to suspension of 14 days or less; (3) any other matter by mutual consent of the parties. Expedited arbitration will be used if requested at the time the party requests arbitration. The following conditions will apply to expedited arbitration:

- (1) The case is not precedential in the unit.
- (2) There are no transcripts or briefs.
- (3) Each case will be limited to 4 hours unless extended by the arbitrator.
- (4) Two cases will be scheduled per hearing day, if pending.
- (5) Bench decision will be requested, but in any event the decision is due 48 hours after the close of the hearing. In all other respects, the provisions of the Article will apply.

# **ARTICLE 15: EQUAL EMPLOYMENT OPPORTUNITY**

## **Section 1. Non-Discrimination**

The Agency and the Union will not discriminate against any unit employee because of race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, pregnancy, physical or mental handicap, income derived from a public assistance program, political beliefs, reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs), and any other protected class covered by law, rule, or regulation.

## **Section 2. Employment Decisions**

The employer shall use only valid and job-related factors in making employment decisions. Employment decisions include such matters as written examinations, performance and potential appraisals, job interviews for internal placement, training assignments, as well as promotions, reassignments and disciplinary actions. The previous list of actions is not meant to be all-inclusive, but, rather, to broaden the definition of “employment decisions.”

## **ARTICLE 16: REDUCTION-IN-FORCE**

### **Section 1**

This Article governs (a) transfers of function and (b) the separation, demotion, reassignment requiring displacement of an employee, or furlough for more than thirty (30) calendar days of bargaining unit employee(s) by reduction-in-force (RIF) from their respective levels. The RIF will be accomplished in accordance with statutory requirements, OPM rules, regulations, and this Agreement.

### **Section 2**

When it is anticipated that a transfer of function or RIF affecting bargaining unit employees will be necessary, the employer will request early-out authorization for such employees if the OPM guidelines or regulations may permit the authorization. In instances where early out authorization is not requested the employer will provide the reasons for the decision to the Union at the time of the preliminary RIF notification. The President of the National Council or the local President, if a local exists at the Field Office(s) affected by the action, will be given preliminary notification not less than 5 days prior to the issuance of general or specific notice to employee.

The notification will include:

- A. The types of action to be taken.
- B. The reasons for the action and the amount of “shortfall” if the action is due to lack of funds.

- C. The competitive area(s) which are proposed to be used and the competitive levels; in each competitive area the employer agrees not to utilize competitive levels which include part but not all of the positions in a job series and grade.
- D. The approximate numbers, types, and grades of positions of the organizational units to be initially affected.
- E. The expected or approximate date of each action.
- F. A copy of any economic impact study made in conjunction with the action.
- G. Other information related to the action which is available to the employer.

### **Section 3**

Upon receipt of preliminary notification, the Union may request bargaining concerning aspects not covered by this Article. Upon such request, the parties will meet to negotiate such aspects at the earliest possible time.

### **Section 4**

The employer agrees to minimize adverse effects upon employees by accomplishing actions under this Article to the extent feasible through attrition and other alternatives as may be appropriate; the Union may make suggestions as to such alternatives and the employer will fully consider and respond promptly with its decision on the suggestions.

## **Section 5**

- A. The Agency may waive qualification requirements in accordance with government-wide regulations for otherwise eligible employees.
- B. Where bargaining unit employees have received a notice of an action under this Article, the Agency will consider such employees for vacancies within the bargaining unit in the competitive area for which they are qualified.

## **Section 6**

- A. When issuing RIF notices, the Agency will ensure the minimum notice periods will be consistent with 5 CFR 351.801.
- B. In addition to the content required per 5 CFR 351.802 and 803, specific notices will also include:
  - (1) Applicable appeal/grievance rights.
  - (2) The action, to be taken and the effective date.
  - (3) The employee's service computation date, competitive area, competitive level, and subgroup.
  - (4) Any offer of assignment by grade, title, series, and location, including the date by which acceptance is to be given to the employer (within 7 calendar days after receipt of the notice).

- (5) The reasons any lower standing employee is being retained in the same competitive level for more than 30 days.
- (6) Any other relevant information such as grade and pay retention. Upon request, the employee will be furnished with an extra copy of the notice.

## **Section 7**

Retention registers will be available for review in a duty status by employees and the Union at the time specific notices are issued. Additional records will be provided where applicable and appropriate.

Retention registers shall be established and employees listed in order of their retention standing, tenure group, and subgroup. At the request of the employee, the employee and/or the employee's, representative will be given the opportunity to review retention registers listing other employees that may be entitled to displace him or her and those he or she may be entitled to displace, and review registers for positions for which the employee is qualified and related records to the extent that these are related to the employees' situation.

Upon request the employer will make copies of relevant records available to employee(s) or the Union, to permit pursuing a corrective action, complaint, or grievance.

## **Section 8**

The employer will take appropriate action to prevent improper release of an employee in regard to incorrect crediting of service time, administrative error, or other incorrect action.

## **Section 9**

When release is unavoidable the employer agrees to reduce the adverse effects of the release by:

- A. Offering the affected employee a best offer of an available position whenever possible; any offer of employment will be at the highest respective rate allowable under government-wide regulations.
- B. Granting administrative leave and relocation expenses in accordance with applicable government-wide regulation on a case-by-case basis.
- C. Making available complete information needed by employees to fully understand the RIF, transfer of function, or furlough for more than 30 days and why the employees are affected.
- D. Upon request assisting employees affected by an action under this Article in use of the services of the OPM Career Transition Assistance Plan and the Interagency Career Transition Assistance Program, and training or benefits under State Employment Agencies in accordance with OPM.

## **Section 10**

Eligible career or career-conditional employees who are separated because of RIF will be placed on a reemployment priority list, and such employees will be given priority for rehiring in the competitive area for permanent positions for which they are qualified and available. Acceptance of temporary employment will not alter an employee's right to be offered permanent employment.

## **Section 11**

The employer will maintain records related to actions under this Article for a least 25 months after the effective date of an action where such records could establish whether the action is appropriate.

## **Section 12**

- A. The employer will provide the Union with relevant information on a timely basis during an action under this Article, if other actions, such as reorganization, appear to be necessary. Notification will also be provided where the change or new information would be relevant to the original action or assist the Union in representation duties.
- B. In the event disputes arise as to the duty to provide any such information, the Union's participation in related activities will not affect the Union's right to pursue the information through other procedures. In the event relevant information becomes available after completion of an Agreement on the impact of an action under this Article, such agreement may be reopened prior to the effective date(s) of the action(s).

## **Section 13**

If, as a result of actions under this Article, an employee is assigned duties different than those previously performed, the gaining supervisor will assure that the employee is provided appropriate instructions, guidance, or training to assume the responsibilities of the position within 60 days. Supervisors will discuss training needs with employees performing different duties on an ongoing basis and will provide on-the-job training as needed.

## **Section 14**

Salary retention for released employees will be the maximum allowable under appropriate law and regulations.

## **Section 15**

Employees on detail will compete for retention from their permanent position, including competitive area and level, rather than from the position of detail.

## **Section 16**

The employer will assure that each affected employee is treated as an individual to the maximum extent possible to resolve special problems and to give special assistance.

## **Section 17**

Activities under this Article will be on official time for employees and Union representatives. Appropriate activities may include explanation of questions, reviewing records, and representation in contacts with the appropriate management officials.

## **Section 18**

The following procedure will be used to break ties when two or more employees in a competitive area and level have the same service computation date.

Employees as described above will receive additional credit for the amount of experience, if any, in a job related to the position from which the release is to take place. In the event a tiebreaker is still necessary, the amount of time at the employee's Field Office will be used. Should a further tie result, the employee with the lowest number in the 8th digit of the social security number will be subject to release; it is agreed the number "0" is lower than "1."

## **Section 19**

The competitive area shall be a local commuting area unless it is not large enough to permit adequate competition in accordance with applicable regulations; the only exception shall be the Houston area wherein competitive area shall be determined on a case-by-case basis.

# ARTICLE 17: REASSIGNMENT

## Section 1. General

Reassignment (the assignment of an employee from one position to another at the same grade level) may be used by the Agency, but will not be used or threatened as a form of discipline or reprisal. An employee whose reassignment is directed for reasons related to his or her performance may request review of the action through the grievance procedure. Reimbursement for travel and transportation expenses incurred in reassignment which is in the interest of the Government, shall be provided in accordance with applicable laws and regulations.

Reassignment for convenience of the employee will be made at the employee's expense. Management will determine eligibility for travel and transportation expenses on a case-by-case basis.

## Section 2. Procedures

### A. Filling of a Vacancy by Reassignment:

- (1) Any bargaining unit employee who wants to be reassigned to another duty station may file a request for reassignment with the Office of Field Management Division Director. Such a request must include:
    - (a) The employee's current Field Office, duty station, grade, and position.
    - (b) The duty station(s) and position for which the employee would like to be considered.
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- (2) Requests for reassignment will be kept on file by the Director, Field Management Division, for a period of six months from receipt.
  - (3) Management will concurrently consider current reassignment requests (no more than six months old) along with other candidates in selecting to fill a vacancy. However, employees requesting reassignment have no rights to priority consideration.
  - (4) Selection will be made by the supervisor from among qualified candidates.
- B. Management agrees that an employee who has been reassigned due to abolishment of employee's position, may request reassignment back to his or her former duty station for his or her own convenience.

### **Section 3. Notice to the Union**

The Area Representative or his or her designee will be notified of all proposed involuntary reassignments of bargaining unit employees concurrently with notification to the employees.

### **Section 4. Rotation**

- A. Rotation of equivalent work assignments within the geographical area serviced by each field or sub-office will be made in a fair and equitable manner.
  - B. Consistent with the U.S. Grain Standards Act, rotation will be made as necessary to preserve the integrity of the official inspection and weighing system.
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- C. Procedures to implement rotation will be appropriate for negotiation at the local level.
- D. The period between rotational assignments will normally not exceed 180 days. Past practice or local contract bargaining may result in a shorter time period.

## **ARTICLE 18: HOURS OF WORK AND OVERTIME**

### **Section 1**

The subject of hours of work and overtime may be included in the negotiation of local agreements as referenced in Article 31 (2) (C) of the National Labor-Management Agreement.

## **ARTICLE 19: INDUSTRIAL DISPUTES AND CIVIL DISORDERS**

Employees in the unit are responsible for not taking sides or becoming personally involved in an industrial dispute between the management and employees of the establishment or plant to which they are assigned. They are also responsible during plant strike periods for reporting to work as scheduled and performing assigned duties unless otherwise directed by his or her supervisor. If a plant strike date is announced in advance, the supervisor shall prearrange for safe access of his or her subordinates to the worksite. The affected employees will be notified prior to the strike of the arrangements which have been made. If the plant strike is effected without prior notice and the employee is confronted with a picket line in reporting for work, he or she shall approach the line, produce identification, state his or her responsibility for reporting for work, and request that he or she be allowed access. If access is refused or the employee is threatened, the employee shall leave the picket line area and promptly report the facts to the supervisor by phone. The supervisor shall carefully consider the situation as described by the employee. The initial and future safety of the employee will be the prime concern in any instructions given. An employee who believes his or her personal safety may be in jeopardy because of civil disorders in the area of the assignment shall contact the supervisor for advice and guidance before the scheduled starting time. If the supervisor has prior knowledge of civil disorder within the area of responsibility he or she shall advise the employee as to what action should be taken.

## **ARTICLE 20: EMPLOYEE DEVELOPMENT**

### **Section 1. Employee Training and Development**

The Management and the Union agree that the training and development of employees within the unit can help significantly to improve the efficiency and effectiveness of operations. Insofar as necessary to develop the skills, knowledges, and abilities needed in the performance of official duties, the Employer will provide employee on-the-job training in areas that are directly related to FGIS programs. Such techniques as interchanging employees between work assignments, detailing employees to other Field Offices and Headquarters, and conducting grading demonstrations, seminars, and courses may be used.

### **Section 2. Technological Developments**

In recognition of the possible impact of technological developments upon the work force, the Employer and the Union agree to meet and confer on the implementation and impact of appropriate formalized training or retraining of employees in the development of new skills required by the introduction of significantly new equipment, process, and workload changes.

### **Section 3. Notice of Training**

Employees are urged to keep his or her employer and the HR department advised of training through submission of documentation, such as certificates of training, or additional Civil Service eligibilities obtained so they may be recorded in his or her opf and be given due consideration for promotional possibilities.

## **Section 4. College or University Attendance**

Management may assign special tours to allow employees to take courses at nearby colleges or universities if:

- (1) Work conditions and work schedules of other employees are not adversely affected.
- (2) The course is work related or will equip the employee for more advanced work in the Agency.
- (3) Full time employees agree to remain responsible for a full 40-hour workweek without receiving premium pay solely because of the rescheduling of hours for education purposes.

## **Section 5. Official Time, Labor Relations Training**

During each year of this Agreement, up to 70 days of official time will be granted to the Council to be distributed to Union representatives to attend Union sponsored labor-management relations training in accordance with applicable decisions of the Federal Labor Relations Authority. Written request for training, accompanied by an agenda or schedule of the proposed training, shall be submitted to the Director, Field Management Division, through the Field Office Manager for approval. Official time under this Section will be granted only for training which is primarily designed to further the interest of the Government by bettering the labor-management relationship and shall be limited to 5 consecutive days per training session and not more than 10 days per employee per calendar year. Travel and expenses and per diem shall not be paid by the Agency.

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## **ARTICLE 21: OFFICIAL TRAVEL**

### **Section 1. General**

Management and the Union recognize that the nature of the mission of the Agency is such that occasionally bargaining unit employees will be required to travel from their official duty station.

### **Section 2. Scheduling Official Travel**

Management agrees, insofar as practicable, to schedule and arrange for travel of bargaining unit employees (for TDY jobs, meetings, conferences, seminars, audits, training session, etc.) to occur within each employee's workweek.

Overtime while on travel shall be paid in accordance with the Fair Labor Standards Act or 5 USC, as appropriate. The Parties agree that disputes arising under this Section may be adjusted through the use of the grievance procedure provided in Article 15 of this Agreement.

### **Section 3. Travel Advance**

Travel advances will be made available prior to the date of departure, to those employees who make timely application, provided, however, that advances will not normally be made for less than \$50 unless such a denial would subject the employee to a hardship.

In cases of emergency job related travel, Management will attempt to accommodate a traveler needing an advance.

## **ARTICLE 22: LEAVE**

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## **Section 1. General**

Annual leave is a right of the employee, subject to the right of the supervisor to fix the time which leave may be taken. Decisions on leave requests will consider the need of the employee as well as of the employer. Every reasonable effort will be made to approve annual leave which is requested in advance so long as the needs of the Agency can be met. The supervisor will not schedule more annual leave during the period than he or she expects can be taken. However, the supervisor may cancel leave if the needs of the Agency cannot otherwise be assured. When approved annual leave in excess of 3 days is canceled, concurrence of the FMDD or his or her designee is required, It will be the responsibility of the employee in consultation with the supervisor to request annual leave in advance to ensure that annual leave is scheduled for use so as to prevent any unintended loss at the end of the year. Annual leave charges will be in increments of 15 minutes.

## **Section 2. Consecutive Vacation Time**

Supervisors will normally schedule annual leave in a manner which permits each employee, if he or she wishes to take at least two consecutive weeks in each year.

## **Section 3. Annual Leave Conflicts**

In the event of a conflict among bargaining unit employees in scheduling an annual vacation, local practices shall govern resolution of the conflict; it is understood such procedures are appropriate for negotiations at the field office level.

Request for advanced leave will be considered on a case by

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case basis in accordance with Government-wide regulations and implementing Agency regulations. An employee who has requested advance annual leave will not be disallowed use at the time for which it has-been requested as provided for in Section 1 unless the provisions of Section 1 have been complied with. It is understood, however, that scheduling of advanced annual leave in accordance with Section 1 is based on an employee's expected accrual of annual leave; when circumstances arise such that an employee is not accruing annual leave as expected this may be grounds for cancellation under Section 1.

#### **Section 4. Cancellation of Leave**

Once approved, annual leave of more than 3 days cannot be canceled or rescheduled unless agreed to by the employee or if the needs of the Agency cannot be assured. In such instances, cancellation or rescheduling must receive the approval of the FMDD or his or her designee. The FMDD or his or her designee will use best efforts to avoid cancellation or forced rescheduling of leave. If no alternatives are available and leave must be canceled or rescheduled, the FMDD or his or her designee will provide to the employee in writing reasons for the action.

#### **Section 5. Tardiness**

Employees must notify their supervisor if they are unable to report to work or return to work from break or an authorized absence within 15 minutes of the scheduled time.

#### **Section 6. Sick Leave**

- (A) Employees shall accrue and be granted sick leave in accordance with Title 5 and OPM regulations. Sick leave charges will be in increments of 15 minutes.
- (B) Employees shall submit a medical certificate, or other administratively acceptable evidence, covering periods of absence:
- (1) In excess of 3 work days or a lesser period when the Agency determines it is necessary.
  - (2) In special cases when the employee did not consult a physician, the supervisor may accept self-certification that states the reason for incapacitation.
  - (3) When an employee is required to care for a member of his or her immediate family who has a contagious disease, or the employee is exposed to a contagious disease and his presence at work would jeopardize the health of co-workers. In such cases, sick leave may be granted only for the period of quarantine established by the local health authority or attending physician.
  - (4) Regardless of the duration of sick leave, employees may be required to provide medical certification to support the sick leave when the following Sick Leave Restriction Procedure has been followed:
    - (a) When a supervisor considers that an employee has established a pattern indicating possible misuse of sick leave, the supervisor will counsel the employee, and will assist the employee in developing methods of reducing sick leave usage where that is possible.
    - (b) Because one purpose of the counseling is to put
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the employee on notice of the full set of instances which are suspected, the counseling will include all trends which the supervisor has noted and the reason(s) the leave usage has been questioned. A record of the counseling must be given to the employee, detailing the discussion including an explanation offered by the employee.

- (c) It is understood that no single sick leave usage will be controlling in establishing or supporting continuation of patterns of alleged leave abuse.
- (d) The sick leave usage of all employees under sick leave restriction will be reviewed at least every three (3) months and a written decision to continue or lift the restriction made; if the review shows improved usage or changed trends of possible abuse, the supervisor will lift the restriction. Records pertaining to the restriction will be removed after the employee has demonstrated one year of improved usage. Any subsequent restriction must be based on usage after the restriction period ended.
- (e) Employees who are incapacitated for duty

because of serious illness or disability may be advanced sick leave for up to 30 days. The employee will not be required to utilize any annual leave prior to utilizing the advanced leave. Sick leave will be advanced when the following required conditions have been satisfied:

1. All available accumulated sick leave to his or her credit has been exhausted.
2. There is no expectation that the employee is contemplating separation by retirement or resignation.
3. A medical certificate substantiates that a serious illness or injury exists.
4. There is an expectation that the employee will remain employed after his or her return to duty long enough to repay the advance of sick leave.

## **Section 7. Approved Leave**

Approved leave or absence will not be a basis for disciplinary or adverse action; the type of leave or absence on which an employee is initially placed may be changed later for good cause.

## **Section 8. Administrative Leave**

Except as provided for in this agreement, the provisions of the APHIS Human Resource Desk Guide (HRDG) 4630 shall apply to the interpretation and application of administrative leave.

In granting administrative leave for hazardous weather or other emergencies, which disrupt travel, the employer will base decisions to grant such leave on, first, a declaration of a Federal Executive Board where such a Board has made a declaration. Secondly, the employer will be guided by the declaration of a state or local authority, which warns against unnecessary travel. When unusually severe weather or traffic conditions exist, the supervisor may excuse tardiness not in excess of 2 hours when they consider the tardiness not reasonably avoidable.

## **Section 9. Unauthorized Absence**

In cases where an employee does not report to work, the employee must notify the appropriate management or supervisory official as soon as possible. The absence is not authorized until the employee receives approval. Unapproved absence(s) may be the basis for discipline. Unauthorized absences due to a documented emergency will be reviewed by management on a case by case basis.

## **Section 10. Abuse of Leave**

In decisions about personnel matters in which leave is an appropriate consideration, the parties agree that abuse of leave is not necessarily evidenced by frequent use of leave or by low leave balances.

## **Section 11. Special Leave Requests**

- (A) The employer will make reasonable efforts and accommodations in attempting to grant the leave needs of employees for maternity, paternity, and adoption purposes and will apply its policies fairly and equitably.
- (B) Employees may request leave for maternity purposes. The request will designate how and in what order the absence will be recorded, either leave or leave without pay. Supervisors will apply existing agency regulations in responding to such requests. The total period of absence for maternity reasons is not defined by regulations.
- (C) The parties recognize that paternity-related activities are an appropriate reason for absences; an employee wishing to be absent from work for such reasons will be permitted to request and may receive leave and leave without pay in accordance with applicable existing agency regulations.

## **Section 12. Travel**

An employee may be excused for a maximum of 2 hours before or after a period of travel, if the time of departure from or arrival at the employee's duty station is such that it is determined that it would be inefficient or futile for the employee to report to the duty station.

## **Section 13. Leave without Pay (LWOP)**

- (A) Leave without pay is not accrued in the same way as sick or annual leave, but may be granted for similar reasons and other good cause.
- (B) An employee may be granted leave without pay to engage in Union activities on the National, District, or Local level, to work in programs sponsored by the Union or the AFL-CIO, upon written request by the appropriate Union office. Such requests will be referred to the appropriate management official and will be approved if the needs of the service can be met without undue hardship or excessive cost. Such employees shall continue to accrue benefits in accordance with applicable government-wide regulations.

## **Section 14. Religious Leave**

Employees may request compensatory time off for religious observances by submitting a request in writing to the immediate supervisor before the religious event. Such requests will be granted unless severe hardship on the business of the agency can be shown. Employees will not be questioned as to the basis or nature of their religious beliefs.

### **ARTICLE 23: DETAILS**

## **Section 1. General**

Details are temporary assignments of employees to positions other than their officially assigned positions. While on detail, the employee remains in the same grade and receives the same salary as he or she would in the employee's official position. The position to which temporarily assigned may differ in title, series, grade, or qualification requirements from the employee's official position. The detail may be either to an established position (one which has been classified as to title, series, grade and therefore qualification requirements are known) or to an unestablished position (one which either has not been classified or necessary approvals for establishment have not been obtained).

## **Section 2. Detail Within the Normal Duty Station**

Details within the normal duty station shall be rotated equitably among qualified employees.

## **ARTICLE 24: CLASSIFICATION**

## **Section 1**

The parties agree that classification of functions and positions is necessary to assure compensation of employees consistent with all duties actually and regularly performed. The parties acknowledge the classification principle of equal pay for substantially equal work.

## **Section 2**

Where correction of classification actions are appropriate, the corrections will be made promptly.

## **Section 3**

(A) FGIS agrees to initiate classification procedures for new work functions when they are called to the attention of FGIS by the Union.

(B) During any period employees perform unclassified work functions, they shall not be compensated at lower grade level or rate of pay than their classified duties would require.

## **Section 4**

- (A) The employer will maintain, and provide to all employees, complete and accurate position descriptions.
- (B) Employees position descriptions will be updated as necessary to include all major duties, which are being regularly performed.
- (C) If an employee has a question concerning his or her classification or position description, he or she is entitled to discuss his or her position description with his or her supervisor. Upon request of the employee, a Union representative may be present during this discussion. If the employee wishes to further pursue the question, he or she may forward a written request to the servicing personnel office. The servicing personnel office will either answer, or acknowledge receipt of the request in writing within 30 days, providing an estimate of the additional time needed to reply.
- (D) The Agency will not use the phrase, “other duties as assigned,” in position descriptions to assign duties that are regularly performed and unrelated to the basic position of the employee.

## **Section 5. Representation in Classification Appeals**

When the employee designates the Union as the employee's representative in a classification appeal, the representative may discuss the classification appeal with the classifier prior to the beginning of a desk audit. Sufficient time shall be allowed prior to the beginning of the desk audit for the designated representative and the classifier to arrange a mutually agreeable meeting date to discuss the classification appeal. The classifier will summarize his findings for the appellant and the Union representative. Any discussion or meeting herein shall take place only with the consent of the classifier.

## **Section 6. Details**

The parties recognize that details to other positions and activities are a necessary and integral part of mission accomplishment. Details to other activities or to higher graded positions for more than 30 calendar days will be documented by notification to the employee and a copy of Standard Form 52 filed in the employee's OPF. The Agency will not use details to avoid filling positions at a higher grade level, nor will they be made on the basis of personal favoritism. Should the requirements of the Agency necessitate an employee's being detailed to a lower graded position, this will in no way adversely affect the employee's salary, classification, or job standing.

## **Section 7**

All personnel actions or omissions resulting in erroneous pay status adversely affecting employees shall be corrected retroactively in accordance with applicable law or regulation including retroactive pay to the date the erroneous status was effective if this is in accordance with appropriate laws and regulations.

## **Section 8**

The parties understand that a classification decision on grade level, series, or title of a position is not grievable, but may be appealed to the Department of Agriculture or to the Office of Personnel Management. Management actions relating to reduction in grade or pay may be grieved; however, under the procedures of Article 13 of this Agreement, or the appropriate statutory appeal procedure.

## **ARTICLE 25: INJURY COMPENSATION**

## **Section 1. Claims**

When an employee or representative reports that a disease or injury has occurred in the performance of official duties, the employee at his or her request will be promptly informed of his or her rights to file for benefits and the benefits payable. The employee shall be advised as soon as possible that continuation of pay and/or compensation benefits (whichever is applicable) can be used in lieu of sick or annual leave. The Agency will give appropriate assistance to the employee in filing a claim.

## **Section 2. Leave**

The Agency and Union understand that injury compensation cannot be paid for any period when an employee is on paid leave. If at the time disability begins the injured employee has sick and/or annual leave to his or her credit, he or she may decide whether to use all or part of it before applying for injury compensation. If the employee should be charged for sick or annual leave (or if he or she is so charged because he or she was not informed of the possibility of injury compensation benefits), he or she may repay in a lump-sum or by any other plan acceptable to his or her payroll office, the amount collected while on annual or sick leave. This repayment would permit him or her to qualify for injury compensation provided all other requirements are met.

## **Section 3. Review of Documents**

Employees will be permitted to review documents relating to their claim which the Office of Workers' Compensation (OWCP) has authorized the appropriate HR department to make available. Employees may be accompanied by their designated representative if they so desire.

## **ARTICLE 26: HAZARD PAY**

### **Section 1**

If an employee submits a request for hazardous pay differential for irregular or intermittent duty, involving unusual physical hardship or hazard, the Agency will provide such pay in accordance with 5 CFR 550, which establishes whether pay can be provided. While the Agency does not necessarily agree to request changes in Appendix A of 5 CFR, the Agency will submit materials, upon request, which are provided to them by employees or the Union, for a determination by OPM.

## **ARTICLE 27: HEALTH AND SAFETY**

### **Section 1. General**

In accordance with the provisions of this Article, the employer shall, consistent with the provisions contained in Section 19 of the Occupational Safety and Health Act, Executive Order 12196, and 29 CFR 1960, furnish to and maintain for employees, places and conditions of employment that are free from hazards, that are causing or likely to cause an accident, injury, or illness to the employee.

### **Section 2. Employee Training and Participation**

The employer agrees that wherever and whenever employees are required to perform duties which involve real or potential hazards they will be provided adequate training to perform the job safely. An employee will not be required to work on a job or machine with which he or she is unfamiliar unless the employer has provided adequate training and instructions to safely perform the job. Such instruction shall include on the job instruction in proper work methods to be used and proper use of protective equipment. In addition, the Agency shall provide all employees classified as ACA's, ACT's, or ACG's with appropriate training designed to provide an orientation to the Occupational Safety and Health Act of 1970. All personnel who perform house rover or shift leader functions shall be provided further training appropriate to perform those functions. Should an employee be assigned work which requires special training, this training will be provided at Agency expense. All safety training will be documented in the employees personnel file.

The parties recognize that FGIS may lack authority to authorize access to non-federally controlled work sites; management agrees to intercede with operators or such work sites to request permission for Union representatives who are not FGIS employees to have access to those work sites in connection with activities under this article. Any safety training or activities under this Article or applicable laws and regulations will be accomplished on official time.

### **Section 3. Safety and Health Complaints**

- A. All employees have the right to report hazardous working conditions to their supervisors. A Management Safety Representative will be designated for each installation who will have responsibility for investigating any unsafe working conditions reported or observed.
- B. The Agency agrees to promptly investigate the suspected hazard and report the findings to the employee, employee representative, or other party who reported the suspected hazard. If written reports are made, copies will be furnished to the Union members of the local Safety Committee if they request them.
- C. Employees, employee representatives, or others who are dissatisfied with the findings with respect to a safety or health complaint may appeal the matter in writing to the Deputy Administrator of the Agency. This does not preclude contesting such findings through other means.
- D. Complaints or reports of suspected or potential or actual safety hazards or violations shall not be grounds for reprisals.

## **Section 4. Equipment and Facilities**

A. All personal protective equipment (PPE) needed to protect employees shall be furnished, maintained, and replaced if necessary by the employer at no cost to the employees provided the employee exercised reasonable care for the equipment. All PPE issued to provide protection from a hazard for which an OSHA Standard exists shall be certified or approved to provide protection from that hazard at the approved level of safety. The following PPE shall be made available to employees when performing work which necessitates the added protection:

(1) Goggles.

(2) Disposable dust masks which meet OSHA criteria; if a situation arises in which protection equipment provided by FGIS is insufficient to safeguard the health and safety of the employee assigned, the employee will not be forced to perform the assignment.

All personnel other than office personnel will be issued:

(1) Hard Hat.

(2) Safety gloves, when the employee is required to perform outdoor tasks.

- B. FGIS will provide appropriate restroom facilities on federally-owned or operated worksites. FGIS agrees that adequate facilities on non-federally owned or operated worksites include sanitary restroom facilities with sufficient soap, hot water, and towels. Employees assigned to work with extremely dirty or hazardous materials will be provided with sufficient time during working hours to wash up before meals and at the end of the work shift.

## **Section 5. Evacuation**

- A. Unduly Hazardous Conditions Which Require Immediate Evacuation.

The following list includes hazards which could reasonably be expected to cause death or serious physical harm to FGIS employees and justifies immediate evacuation. Under this section, employees may evacuate without prior supervisory approval.

- (1) Fire, explosion, smoldering grain, or smoke in any portion of the facility.
- (2) Suspended dust in any inside open area within an elevator where the concentration is such that the outline of a lighted 100 watt bulb is obscured at a distance of 10 feet and the hourly relative humidity is below 35 percent. If the hourly relative humidity is below 35 percent and there is no dust control problem, evacuation of the facility is not authorized. Employees who evacuate under the provisions of this section are required to immediately notify their supervisor after evacuation.

## B. Unduly Hazardous Conditions Which May Require Evacuation:

The following list includes hazards which could reasonably be expected to cause death or serious physical harm to FGIS employees, if continued, and justifies evacuation unless the hazards are immediately corrected. Under this section employees may evacuate without prior supervisory approval.

- (1) Welding, torch cutting, open flame soldering and brazing, or similar hot work being performed within the elevator. If elevator management establishes written procedures at locations which are approved by the FGIS Field Office Supervisor, evacuations are not authorized as long as the written procedures are followed.
- (2) Compressed air being used to remove dust from walls, ceilings, and ledges. If elevator management establishes written procedures which are approved by the FGIS Field Office Supervisor, evacuations are not authorized as long as the written procedures are followed.
- (3) Violations of established rules pertaining to smoking, burning matches, or lighters.
- (4) Electric sparks or arcing from machinery or equipment, or heat so excessive that ignition appears imminent.
- (5) Frictional sparks by mechanical equipment (e.g. rotating machinery or driving wheels of engines used for positioning railcars in the enclosed dump area.)

- (6) Damaged or frayed electrical wires or cords with exposed wires.
- (7) Blocked stairwells and/or means of egress (exits).
- (8) Fumigant odors that are irritating to eyes, nose, and/or throat. Employees who evacuate under the provisions of this section are required to immediately notify their supervisor.

C. Unduly Hazardous Conditions Which Require Planned Corrective Action.

The following list includes hazardous conditions, which may constitute a threat to the health and safety of FGIS employees. These conditions shall be reported to the supervisor. The Deputy Administrator or his or her designee may withhold official services if elevator management is unable to demonstrate that these identified hazards can be controlled or corrected. The Deputy Administrator or his or her designee may consider repeated identification of these hazards as justification for evacuation.

- (1) Suspended dust in any inside open area within the elevator where the concentration is such that the outline of a lighted 100 watt light bulb is obscured at a distance of 10 feet.
- (2) Grain dust or grain spills in any inside open area within an elevator that is not cleaned up concurrently with on-going operations. For the purpose of this Section, “cleaned up concurrently with on-going operations,” means that dust and spills must not be allowed to accumulate for more than 12 hours before clean-up begins.

- (3) Machinery operating in accumulated dust or grain spills.
- (4) Unapproved electrical equipment used in the facility (e.g. drills, fans, heaters, and trouble lights).
- (5) Bucket elevator legs, conveyors, or processing machinery not being used, but running idle for prolonged periods of time.
- (6) Electrical fuses blowing frequently or circuit breakers tripping frequently.
- (7) Overheating or malfunctioning equipment (e.g. hot bearings, slipping or rubbing belts, elevator buckets striking leg house, head pulleys, and return rollers running hot).

#### D. Potentially Hazardous Conditions

In the event an employee believes that a hazardous condition, not covered by sections A, B, and C, requires evacuation, the employee shall notify his or her supervisor who shall inspect the alleged hazard and determine whether or not evacuation is justified.

E. Evacuation determination must be made in the following situation:

When employee(s) during the course of performing official duties believes he or she is being required to work under conditions which are unsafe or unhealthful and presents an imminent danger, which may cause death, injury, occupational illness, loss of faculty, or major property damage, they shall cease the activity and notify the nearest available supervisor of the alleged hazard. The supervisor or Head Grader shall make an evaluation of the situation and after discussion with appropriate safety personnel and the assigned Union official, shall make a determination as to whether work may proceed. If a determination is made that an imminent danger situation does exist, work shall not resume until abatement is made. If a determination is made that no imminent danger exists, the FGIS official shall give the rationale for the decision to the employee(s) and the Union official and upon request written copies will be provided to the appropriate Union official.

F. When a supervisor determines that a dangerous condition is present at a worksite, employees at the worksite will be notified as soon as practicable as to precautionary steps to be taken.

- G. In addition to any notices required by applicable law or regulations, FGIS will post notice of hazardous conditions at federally controlled spaces (e.g. elevator labs at the worksite at which the hazard is present). This notice shall be posted at the elevator where service is being performed and shall remain posted until the cited condition has been corrected or for three days, whichever is longer. Such notices shall contain a warning and description of the unsafe or unhealthful working conditions and any required precautions required by applicable regulations.
- H. Determination as to appropriate conditions for evacuation in any portion of the facility (e.g. dump pits, tunnels, belt lines, galleries, wharfs, or other structures) or within 100 feet of the facility, shall be made by the FGIS Safety Officer or Supervisor after application of the pertinent provisions of this Article.
- I. FGIS will assure that all handicapped employees are provided appropriate assistance to evacuate buildings in cases of emergencies.

## **Section 6. Administrative Controls**

### **A. Work in Remote Areas or Enclosed Spaces**

- (1) Employees working in remote locations will be checked with periodically during their shifts by the supervisor, other employees, or security guards.

Where employees are required to work in confined or remote spaces, which present a known hazard, a means of communication will be provided to assure the maintenance of constant communication with the employee.

- (2) If work is required to be performed in areas where flammable or toxic vapors exist, all such areas shall be maintained so that vapor levels remain within acceptable safety parameters as determined by OSHA.

### **B. Repairs and Adjustments to Operating Equipment**

No employee, other than qualified personnel shall be required to repair or adjust moving or operating machinery.

### **C. Ship Boarding**

No employee shall be required to board a ship except by accommodation ladder or gangway provided with railings and properly secured.

## D. Hazard Prevention

The parties recognize that despite prevention efforts of management, and observation and safety awareness by management, the employee, and the Union, all potential job site hazards are not readily identifiable. To help prevent accidents, illness, or injury resulting from hazards which are identifiable, employees are encouraged to practice safety procedures to the utmost. Additionally, supervisors will regard safety consideration as one of their highest priorities, and to this end the parties agree.

- (1) The agency will comply with any standards issued by OSHA for work sites encountered by employees.
  - (2) FGIS will conduct safety inspections on an ongoing and continuing basis to monitor the work site for hazards as provided in Section 5.
  - (3) When FGIS is made aware of the existence of a possible work site hazard, it will determine the manner by which to investigate the information.
    - (a) If the presence or absence of the hazard cannot be determined by observation alone, FGIS will not permit an employee to be at the location of the hazard unless the safety of the location has been established by an individual qualified to make these determinations by applying appropriate professional methods to determine the safety.
    - (b) In evaluating a hazard or in instances where there is conflicting information about a hazard, the supervisor will consider information from any source and will make an inspection at his or her discretion.
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- (4) Regardless of the outcome of an evaluation by FGIS, the employee's rights under Section 5 will be respected.

#### E. Safety Committees

- (1) The parties agree to establish a National Safety Committee. The National Committee meetings will be held at least bi-annually if an agenda is submitted by either party and received at least 20 days before the scheduled meeting. Membership on the committee shall normally not exceed one Union representative per area and an equal number of Management representatives. Management will annually furnish a listing of employees in the bargaining unit by duty station to the council president.
- (2) There shall also be established field office Safety committees, at those offices having locals, comprised of not more than 3 persons for each side, which shall meet twice annually if necessary.
  - (a) Local Field Office Safety and Health inspections shall be conducted by the Committee to coincide with the safety meetings.
  - (b) The Union and Management agree to exchange information concerning matters which may be relevant to the Health and Safety of unit employees.

## F. Abatement of Unsafe and Unhealthy Working Conditions

- (1) The employer agrees to assure whenever possible prompt abatement of unsafe or unhealthy working conditions. When this cannot be accomplished, the employer agrees to develop an abatement plan setting forth a timetable for abatement and a summary of interim steps. Employees exposed to such conditions and their representatives and the Council shall be informed of the abatement plan.
- (2) The employer agrees to assure response by the onsite supervisor to employee reports of unsafe or unhealthy working conditions and require (1) an immediate inspection for imminent danger conditions; (2) an inspection within one working day for potential serious conditions; and (3) an inspection within five workdays for other conditions. Any employee or Union official is authorized to request an inspection of the workplace when he or she believes an unsafe or unhealthy condition exists.

G. Union officials may attend meetings of Field Federal Safety Councils in the local field office area, not to exceed 24 hours of meetings per calendar year per local.

## H. Safety Records

The Agency will maintain and provide to the Union upon request safety records as required by applicable law and regulation.

## I. Alternate Standards

The Agency shall comply with those standards required by this Article and the applicable provisions of the Occupational Safety and Health Act (OSHA).

## J. Notice to Union of Injury or Illness

The area representative will be promptly notified of a job-related illness, injury, or death of a bargaining unit employee in the area.

## K. Medical Limitations of Employees

FGIS agrees to recognize medical limitations of employees. Where possible, limited duty assignments will be arranged on a temporary basis if the employee furnishes medical support for the light duty.

## L. Accident Investigation

The Union will be informed of the results of investigations of occupational accidents.

## M. Temperature Release

The parties agree that working in extreme temperatures may constitute unhealthful conditions.

## N. OWCP

An employee who becomes ill or injured as a result of performance of official duties will be provided administrative leave and access to medical treatment and be placed on an appropriate category of leave if incapacitated for work, and advised promptly of any benefits to which the employee may be entitled under the Federal Employee's Compensation Act.

## O. Health Services

Adequate first aid kits will be maintained by the Agency at federally controlled worksites.

## **ARTICLE 28: STAFFING**

### **Section 1. Vacancy Announcements**

Vacancy announcements shall be distributed nationwide, as applicable.

### **Section 2. Career Ladder Positions**

Employees in career ladder positions shall be promoted annually to the next higher grade level within the career ladders when they meet the performance requirements of 5 CFR 335.104, qualifications and time-in-grade standards. Qualifications include OPM qualification standards, any required examinations, and demonstrated necessary knowledges, skills, and abilities as determined by the Field Office Supervisor through observation of on-the-job performance.

## **ARTICLE 29: PAYCHECKS**

### **Section 1**

The official payday for all employees is Thursday of the regular pay period workweek. Employees who receive pay through the direct electronic transfer method may receive pay slightly earlier than they would otherwise.

### **Section 2**

The Agency will make every effort to assure that earnings statements are promptly distributed to employees.

### **Section 3**

If an employee has not received a paycheck by Monday following the pay period week, the employee may contact the field office manager to initiate procedures for receiving payment. The HR department will take all available actions to assure that payment is received as promptly as possible.

### **Section 4**

Absences for purposes of personal arrangements when non-receipt of paychecks results in an immediate financial hardship will be excused in accordance with OPM regulations.

## **ARTICLE 30: AVAILABILITY OF REGULATIONS**

### **Section 1. USDA and FGIS Directives**

The Employer will make available the rules governing employment. FGIS Instructions affecting personnel policies, practices and working conditions will continue to be made available in the servicing Personnel Office and Field Office. The Employer agrees to provide data electronically to the Union.

### **Section 2**

Employees and Union representatives will be allowed to review regulations maintained by the employer at the field office. When needed to make presentations, the Union may request copies of such regulations.

# **ARTICLE 31: NEGOTIATION OF LOCAL AGREEMENTS**

## **Section 1**

As provided for in Section 3 below, local agreements may be negotiated at the Field Office level by an AFGÉ Local, which represents all of the bargaining unit employees assigned to the respective Field Office.

## **Section 2. Relationship to Master Agreement**

- A. It is understood by the Parties to this Agreement that this is the Master Agreement and that only a local agreement may be negotiated at the local level. The Master Agreement is governing and nothing may be included in the local supplemental agreement which is in conflict with the Master Agreement. The rights clauses apply to all supplemental agreements negotiated.
  
- B. It is understood that the purpose of local supplemental agreements is for coverage of matters specifically applicable to the respective Field Office. Each local agreement may include matters for which local bargaining is indicated in Section 2C. below and the following:

Health and Safety  
Communications  
Use of Official Facilities  
Reduction in Force/Transfer of Function  
Reassignment  
Training  
Leave  
Duties

Negotiation of the above subjects will be for the purpose of clarifying and defining such subject with respect to administration of the Master Agreement to the local conditions.

- C. Except as provided by this Article, matters will not be included in the negotiation of local agreements other than the timing and duration of rest breaks, hours of work and overtime, local changes in personnel policies and practices, and other matters affecting conditions of employment.

## **ARTICLE 32: NEGOTIABILITY DISPUTES IN LOCAL NEGOTIATIONS**

Should an issue develop during local negotiations as to whether a proposal is negotiable, or not, it will be resolved in accordance with this Article. If the question of negotiability involves a matter as to whether a proposal violates applicable laws, regulations, or the Federal Service Labor-Management Relations Statute (Statute), it may be processed under the procedures of the Federal Labor Relations Authority. If the question of negotiability involves a matter as to whether a proposal is inconsistent with this Agreement it shall be considered a grievance over the interpretation and application of this Agreement and may be referred to arbitration under the Article on arbitration.

## **ARTICLE 33: PUBLICIZING THE AGREEMENT**

### **Section 1. Distribution**

The Agency will distribute the Agreement electronically and provide hard copies to employees currently assigned to the bargaining unit. Proof copies of the Agreement will be reviewed and approved by the Agency and the Union prior to final printing.

### **Section 2. New Employee Information**

The Agency agrees that when new employees receive orientation material, health insurance plans of the AFGE will be included. The supervisor will advise the employee of AFGE's exclusive recognition and will give the employee a copy of the Agreement.

## **ARTICLE 34: MID-TERM NEGOTIATIONS**

### **Section 1**

The parties will engage in mid-term bargaining in accordance with provisions of the Statute. The Agency agrees to comply with the FLRA or higher authority, if appropriate, in regard to an obligation to meet in mid-term bargaining at the request of the Union.

### **Section 2**

The parties will conduct mid-term bargaining by mutual consent.

### **Section 3**

Mid-term negotiations will be held in accordance with the following:

- A. Official time for Union negotiations will be authorized in accordance with 5 USC 7131(a).
- B. One (1) day of preparation time for each Union negotiator authorized official time in accordance with 5 USC 7131(a). Additional time may be granted if approved by the Agency's chief negotiator.

## **ARTICLE 35: DURATION OF AGREEMENT**

### **Section 1. Effective Date and Term**

This Agreement shall remain in full force and effect for 3 years from the date of Agency Head approval by the USDA.

### **Section 2. Reopening**

Either party may give written notice to the other not more than 90 days nor less than 60 days prior to the anniversary date and each subsequent expiration date of its desire to reopen, amend, or modify the agreement. Requests to reopen, amend, or modify the agreement prior to an anniversary date will be effective by mutual consent of the Parties.

### **Section 3. Renewal**

If neither party serves notice to renegotiate this Agreement, the Agreement shall be automatically renewed for one-year periods; subject to the other provisions of this Agreement.

## **ARTICLE 36: CONTRACTING OUT**

### **Section 1**

This Article is not intended to apply to existing Agency practices in regard to commodity samplers for the commodity program in effect under the AMA of 1946. All negotiations under this Article are intended to be in accordance with the rights of the parties as provided by 5 USC 7106.

### **Section 2**

Contracting out and determinations made with respect thereto shall be conducted in accordance with applicable law, regulation and provisions of OMB A-76. Grievances pertaining to this Article shall be adjudicated in accordance with the Statute and Article 13 of this Agreement.

### **Section 3**

The Agency will provide the Union with timely notice of any plan or decision to conduct a contracting-out study pertaining to work performed by bargaining unit positions and afford the Union an opportunity to review and comment on the study. Upon request, the Agency will provide the Union material related to contracting-out studies, which is reasonably available and necessary for negotiations on the matter.

When the Agency makes a determination with respect to contracting-out of bargaining unit work, the Agency will provide timely notification to the Union of such decision. The Agency will negotiate with the Union upon request in accordance with 5 USC 7106.

When decisions to contract out by the Agency are based upon budget concerns, the Union is entitled to request budgeting data, which is reasonably available and necessary for negotiations and discussions concerning the decision to contract out in accordance with 5 USC 7106.

## **ARTICLE 37: REORGANIZATION**

### **Section 1**

The Union recognizes the right of the Agency and appropriate governmental authorities to determine, in accordance with applicable law and regulations the organization of the Agency. The Agency will notify the Union in advance of all proposed reorganizations involving members of the bargaining unit. The Agency and the Union will negotiate upon request, in accordance with 5 USC 7106. All negotiations under this Article are intended to be in accordance with the rights of the parties as provided by 5 USC 7106.

### **Section 2**

The Union is entitled to request information concerning reorganizations, which is reasonably available and necessary and in accordance with 5 USC 7114(b)(4).

### **Section 3**

Where it is within the authority of the Agency to do so, the Agency agrees to give due consideration to suggestions of the Union in arriving at determinations with respect to reorganizations involving members of the bargaining unit. Upon request, the Agency will consider the possibility of arranging discussions between the President of the National Council and the FMDD concerning such reorganizations.

## **ARTICLE 38: AGENCY BUDGET**

### **Section 1**

The Union recognizes the right of the Agency and appropriate governmental authorities to determine, in accordance with applicable law and regulation, the budget of the Agency. Additionally, the Union is entitled to request information such as budget plans, submissions, etc., through appropriate mechanisms. The parties agree that when requests for information can be granted in accordance with 5 USC 7114(b)(4), the Agency will provide the Union such data.

### **Section 2**

When the Agency must take actions such as furloughs, reduction-in-force, or other actions necessitated due to budgetary constraints, the employer will, upon request, negotiate with the Union. All negotiations under this Article are intended to be in accordance with the rights of the parties as provided by 5 USC 7106.

### **Section 3**

When decisions to contract out by the Agency are based upon budget concerns, the Union is entitled to request budgetary data which is reasonably available and necessary for negotiations in accordance with 5 USC 7106.

# **ARTICLE 39: TESTS AND EXAMINATIONS**

## **Section 1**

All tests and employee selection procedures shall be valid and job-related in accordance with EEOC and OPM guidelines.

## **Section 2**

The employer will provide such training to unit employees as is necessary to perform work assigned by the employer. The employer will comply with its training obligations for training employees under 5 CFR 410.301.

## **Section 3**

Upon request, the FGIS agrees to schedule an employee for testing, which is required for non-competitive career advancement/promotion prior to the time the employee meets other requirements for non-competitive career advancement/ promotion.

# **ARTICLE 40: RESEARCH PROGRAM DEMONSTRATIONS**

## **Section 1. Definitions**

For the purposes of this Agreement, research programs shall mean the planned study of the manner in which public management policies and systems are operating, the effect of those policies and systems, the possibilities for change, and comparisons among policies and systems.

For the purposes of this Agreement, “demonstration project,” means a project conducted by the OPM, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management.

## **Section 2**

Prior to the employer’s official response to an inquiry from a higher-level authority concerning a research program or demonstration project, which would affect conditions of employment in the unit, the employer will afford the Union the opportunity to timely review the program or project. The Agency’s response will include any comments from the Union.

### **Section 3**

Employees in the bargaining unit shall not be included within any project under this Article, as described in 5 USC 4703(a), unless there is another written agreement between the parties, which permits the inclusion. Employees in the unit shall not be included in any project which is not covered by a collective bargaining agreement until the Union has been afforded the opportunity to bargain in accordance with the Statute.

### **Section 4**

The Union will be provided an opportunity to timely review and comment on an evaluation or report pertaining to this Article that the Agency is issuing, provided the issuance is not in conflict with an agreement with the OPM.

### **Section 5**

Recommendations or conclusions of research or demonstration projects which are in conflict with the provisions of this Agreement shall not be implemented during the specified term of this Agreement except by mutual written agreement of the parties.

# **ARTICLE 41: PROMOTIONS**

## **Section 1**

Promotions will be made in a fair and equitable manner.

## **Section 2**

Temporary promotions within the bargaining unit will be made competitively if expected to last at least 120 days. After 120 days of a noncompetitive promotion, the employer may end the temporary promotion, or may make it competitive. However, if there are no other qualified employees available within the Field office who could perform the work of the temporary promotion, the temporary promotion can be extended within the limits of applicable regulations to allow performance of the required work.