

**COLLECTIVE BARGAINING
AGREEMENT**

between

**USDA RURAL DEVELOPMENT
OREGON**

and

**NATIONAL FEDERATION OF
FEDERAL EMPLOYEES
FEDERAL LODGE 7**

Effective April 27, 2023

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PREAMBLE

Pursuant to the policy set forth by the Federal Service Labor-Management Relations Statute, Chapter 71, Title 5 of the U.S. Code hereinafter referred to as the Statute, regarding the following Articles of this Collective Bargaining Agreement, hereinafter referred to as the AGREEMENT, together with any subordinate amendments, constitute a total agreement, by and between the PARTIES, who are the United States Department of Agriculture, Rural Development, Oregon, hereinafter referred to as the EMPLOYER, and the National Federation of Federal Employees, Federal Lodge 7, (NFFE FL-7) of the International Association of Machinists and Aerospace Workers (IAMAW), hereinafter referred to as the UNION, for the employees in the bargaining unit, hereinafter referred to as the EMPLOYEES.

This Agreement is entered into pursuant to the Certificate of Representation dated April 8, 1997, or as amended by the Federal Labor Relations Authority in any future certifications.

This Agreement defines certain roles and responsibilities of the Parties, and states policies, procedures, and methods that govern working relationships between the Parties. They have entered into the Agreement primarily for the following reasons:

- a. To improve labor management relations by providing employees an opportunity to participate in the formulation and implementation of personnel policies and procedures.
- b. To facilitate the collective bargaining process and the adjustment of grievances.
- c. To provide for systematic labor management cooperation.
- d. To promote the highest degree of efficiency and responsibility in the mutual accomplishment of Agency objectives.
- e. To provide for the safety and well-being of the employees in the performance of their duties.

The Parties agree as follows:

ARTICLE 1 - RECOGNITION AND UNIT DESIGNATION

1-1 RECOGNITION. The Employer recognizes that the Union is the exclusive representative of all employees in the bargaining unit described below as "included" or as amended by the Federal Labor Relations Authority in any future certifications.

- a. Included. All full time, temporary and part time non-professional employees of Rural Development in the State of Oregon as amended by the certificate of representation from case number WA-RP-20-0055.
- b. Excluded. Non-professional employees of the Business Center, professional employees, management officials, supervisors and employees described in 5 USC 7112(b) (2), (3), (4), (6) and (7).

ARTICLE 2 – DEFINITIONS

The following definitions for the terms used in this Agreement shall apply:

- a. Adverse Action. Refers to a removal, suspension for more than fourteen (14) days, reduction in grade or pay, or furlough of thirty (30) days or less, taken under Title 5, USC 7512 (Adverse Actions), or Title 5, U. S. C. Chapter 4303 (Unacceptable Performance).
- b. Amendments. Modifications of the Agreement to add, delete, or change portions, sections, or articles of the Agreement.
- c. Authority. The Federal Labor Relations Authority as established by the Civil Service Reform Act of 1978.
- d. Conditions of Employment. Personnel policies, practices and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except policies, practices, and matters relating to political activities under subchapter III of Chapter 73 of Title 5, the classification of any position, and matters specifically provided for by Federal statute (see 5 USC 7103 (a) (14)).
- e. Consultation Meetings. A discussion between representatives of labor and management for the purpose of exchanging views on matters of concern to the bargaining unit and the Employer.
- f. Days. Means calendar days unless otherwise stated. If a non-statutory due date falls on a Saturday, Sunday, or holiday, the next official workday will be considered the due date.
- g. Disciplinary Action. Refers to a letter of reprimand, or a suspension for fourteen (14) days or less.
- h. Discuss/Discussion. Refers to a verbal or written communication between the Parties for the purpose of obtaining each other's views on matters of appropriate concern to employees. Discussions shall in no way nullify or abrogate the rights of the Parties.
- i. Employee. A member of the bargaining unit described in Article 1.
- j. Formal Discussion. Any formal discussion between one or more representatives of the Employer and one or more employees in the bargaining unit or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment.
- k. Good Faith Bargaining. Good faith bargaining includes the obligation of the Employer and the Union to approach negotiations with a sincere resolve to reach a collective bargaining agreement; to be represented by duly authorized representatives prepared to discuss and negotiate on any condition of employment; to meet at reasonable times and convenient places as frequently as necessary; and to avoid unnecessary delays. It also includes the Agency furnishing information requested by the Union not prohibited by law, which is normally maintained,

reasonably available, necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining and which does not constitute guidance, advice, counsel, or training provided for Management relating to collective bargaining.

- i. Grievance. Grievance means any complaint (a) by any employee concerning any matter relating to the employment of the employee; (b) by any labor organization concerning any matter relating to the employment of any employee; or (c) by any employee, labor organization, or agency concerning the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or, any claimed violation, misinterpretation or misapplication of any law, rule, or regulation affecting conditions of employment.
- m. Impasse. The inability of the representatives of the Employer and the Union to arrive at a mutually agreeable decision concerning negotiable matters through the bargaining process.
- n. Management Official. An individual employed by the Employer in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the Agency.
- o. Negotiation. Bargaining by representatives of the Employer and the Union on appropriate issues relating to conditions of employment, working conditions, and personnel policies and practices, with the view toward arriving at a mutually acceptable agreement.
- p. Negotiability Dispute. A disagreement between the Parties as to the negotiability of an item. Negotiability proceedings are conducted in accordance with 5 CFR 2424.
- q. Statute. Title VII of the Civil Service Reform Act of 1978 is also known as the Federal Service Labor-Management Relations Statute or the Statute. The Statute defines and lists the rights of employees, labor organizations, and agencies to reflect the public-interest demand for the highest standards of employee performance and the efficient accomplishment of Government operations. The Statute allows employees to organize, bargain collectively, and to participate through labor organizations of their choice in decisions affecting their working lives.
- r. Supervisor. An individual employed by the Employer having authority in the interest of the Agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment.
- s. Supplements. Additional articles negotiated during the term of the Agreement.
- t. Union Official and/or Representative. Any representative of the Union, including national and international representatives designated by the Union, and the duly elected or appointed officials of the NFFE, FL7 (IAMAW) including Stewards and Officers.

- u. Weingarten Interview. Any examination of an employee in the unit by a representative of the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against him/her, and the employee requests Union representation.

ARTICLE 3 - MANAGEMENT RIGHTS

3-1 GOVERNMENT REGULATIONS. In the administration of all matters covered by this Agreement, the Parties and the employees are governed by laws, Government-wide rules, and regulations.

3-2 RIGHTS RETAINED. The Employer retains the management rights as provided by Section 7106 of the Statute:

- a. Subject to subsection b., nothing in this Article shall affect the authority of any management official:
 1. to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
 2. in accordance with applicable laws:
 - A. to hire, assign, direct, layoff, and retain employees, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against 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 or (ii) any other appropriate source; and,
 - D. to take whatever actions may be necessary to carry out the agency mission during emergencies.
- b. Nothing in this Article shall preclude the Employer and the Union from negotiating:
 1. at the election of the Employer, 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 Employer will observe in exercising any authority under this Article; or
 3. appropriate arrangements for employees adversely affected by the exercise of any authority under this Article by such management officials.

3-3 NONABRIDGEMENT. The right to bargain over the impact of any decision involving a Management right, and the right to negotiate procedures for implementing such decisions, shall not be abridged by anything in this Article.

ARTICLE 4 - EMPLOYEE RIGHTS

4-1 UNION MEMBERSHIP. Employees in the bargaining unit shall be protected in the exercise of their right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization, or to refrain from such activity. This Agreement does not prevent any employee, regardless of Union membership, from bringing matters of personal concern to the attention of appropriate Union or Agency officials in accordance with applicable laws, regulations, or Agency policies, or from choosing his/her own representative in a statutory appeal action.

Nothing in this Agreement shall abrogate any employee's right or require an employee to become or to remain a member of a labor organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions. The employee shall not be disciplined or otherwise discriminated against because he/she has filed a complaint or given testimony under the Statute, the grievance procedure, or any other available procedure for redressing wrongs to an employee.

4-2 INFORMING EMPLOYEES. During new employee orientation and as rules and regulations are updated and/or modified, employees will be provided with information regarding the rules and regulations they are expected to follow. This information is generally available electronically. Upon request, the Employer will provide assistance to employees having difficulty locating information.

4-3 ACCOUNTABILITY. The Employer affirms the right of an employee to conduct his/her private life as he/she deems fit; and to engage in outside activities and undertakings of his/her own choosing, as long as the conduct, activities, or undertakings of the employee are in accordance with U.S. Department of Agriculture, Rural Development, and Government-wide regulations governing employee responsibilities, conduct and political activities. Employees who are required to file a financial disclosure must seek prior written approval before engaging in outside employment.

4-4 HUMAN RESOURCES.

- a. Employees may call or email the Human Resources (HR) office directly. However, in order to ensure a timely and accurate response, employees with HR issues, questions or concerns should contact their supervisor or utilize the Human Resources Service Request system or successor. Once an HR Specialist is assigned, employees may contact him/her directly.
- b. Twice a year, the Employer will hold a virtual HR town hall Q&A for all employees to obtain information and ask questions about personnel issues. Questions and topics will be solicited in advance. If the information from the session prompts new questions, employees are free to ask follow-up questions. The Employer and the Union will work together to identify additional topics.
- c. Promotions, awards, and personnel actions will be processed in a timely manner.
- d. When a personnel action or error in personnel or payroll matters requires processing or correction, Management will promptly process or correct the issue after the bargaining unit employee brings them to the attention of a supervisor or opens a help

ticket in the Human Resources Service Request system or successor.

4-5 CORRECTIVE ACTIONS. Employees will normally not be admonished, counseled, or given verbal warnings except in a setting that protects an employee's dignity and confidentiality. It is recognized, however, that in some instances the corrective action must be given immediately, on-the-site where the improper behavior occurred. Such instances should be rare and handled in a professional manner, respecting the dignity of the employee.

4-6 RECORD RETENTION. The Employer will provide each employee with access to his/her Official Personnel File through eOPF or hardcopy. Records will not be retained longer than the period prescribed by Government-wide or Agency regulations, or as noted within this Agreement.

4-7 TESTIMONY. When a bargaining unit employee is requested to testify in his/her official capacity on behalf of the Government, the Employer will determine the appropriate response to the request. Employees directed to testify in their official capacity will be provided appropriate travel and per diem.

4-8 INCIDENTS WITH THE PUBLIC. Employees working with the public may request time away from the public area if the employee has been threatened either verbally or physically by a member of the public. The supervisor will evaluate the situation and pursue the best course of action to de-escalate the situation. The employee will be given duty time to prepare a report of the incident and present it to his/her immediate supervisor.

4-9 PERSONAL USE OF GOVERNMENT EQUIPMENT.

- a. Employees may use Government property if it involves negligible expense to the Government such as electricity, ink, small amounts of paper, and ordinary wear-and-tear.
- b. Employees are authorized to make limited personal local telephone calls.
- c. Usage of the Employer's telecommunications and internet services is further clarified by Departmental Regulation 3300-001, Telecommunications & Internet Services and Use, and Departmental Regulation 3300-001-I, Internet, or successors and this Agreement.

4-10 PERSONAL USE OF THE INTERNET. Employees may use telecommunications and internet resources for personal matters on an occasional basis provided the use does not interfere with official business. Limited personal use of telecommunications and internet resources shall normally take place during an employee's personal time.

4-11 COMMUNICATIONS. Employees shall have access to an e-mail and voice-mail account, where the office has such facilities.

4-12 MEAL AND BREAK SPACE. Management will attempt to secure space in the workplace that can be used for employee meals and breaks which may be a lunchroom, workspace, common area, etc. Such space will be located in an area that is accessible to employees. Employees are permitted to eat meals at their desks. Employees shall normally have continual access to a sink, refrigerator, and microwave.

4-13 PERSONNEL RECORDS. Access to official personnel records and other records shall be limited to authorized channels and those whose official duties require such access. The Employer shall be sensitive to individual rights to personal privacy and shall not disclose information from any personnel record unless disclosure is part of their official duties or required by executive order, regulation, or statute (e.g., required by the Freedom of Information Act, 5 USC 552).

4-14 SEARCHES. When the Employer searches an employee's workspace, (e.g., desk, locker, cabinet, etc.) in a non-criminal matter, the employee and his/her representative will be allowed to be present during the search, if available. If the employee was unavailable, he/she will be notified in writing that his/her workspace was searched.

4-15 AGENCY TECHNOLOGY. Employees have no reasonable expectation of privacy while using Agency technology (i.e., computers, phones, fax). Use of Agency technology and monitoring of any use will be subject to Government-wide law, rule and regulation.

ARTICLE 5 - UNION RIGHTS AND REPRESENTATION

5-1 RECOGNITION. The Employer recognizes that the Union has the exclusive right to represent all employees in the bargaining unit in negotiations with the Employer with regard to all matters affecting conditions of employment. The Employer agrees to respect the rights of the Union.

Within thirty (30) calendar days of the effective date of this Agreement and as necessary, the Union will designate a Union representative to be the primary point of contact with the Employer unless otherwise designated.

The Parties recognize that changes may occur in the workplace on a regular basis. Whenever either party proposes new and/or changes to working conditions subject to bargaining under 5 USC Chapter 71, it will give the other party notice as required by Article 6 Mid-Term Negotiations.

5-2 REPRESENTATION OF EMPLOYEES.

- a. As the exclusive representative of all employees in the bargaining unit, the Union shall be given the opportunity to be represented at:
 - i. Formal discussions – any formal discussion between one or more representatives of the Employer and one or more employees in the bargaining unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or
 - ii. Weingarten interviews – any examination of an employee in the bargaining unit by a representative of the Employer in connection with an investigation if (i) the employee reasonably believes that the examination may result in disciplinary action against the employee, and (ii) the employee requests representation.

If an employee requests representation, the Employer has three (3) options:

1. grant the request,
 2. discontinue the interview, or
 3. offer the employee the choice between continuing the interview without representation or having no interview.
- b. Union representatives may speak with bargaining unit employees or supervisors as necessary to fulfill their representational functions. When these activities occur on duty time, they will be in accordance with Article 25 Official Time.
 - c. The Union is responsible for representing the interests of all employees in the bargaining unit without discrimination and without regard to labor organization membership. However, this duty of fair representation does not apply when a union is acting outside the authority granted under 5 USC 7114 of the Statute as the exclusive representative (for example, in filing a lawsuit, MSPB proceedings, EEOC proceedings).

5-3 ANNUAL SURVEY. As the exclusive representative of all employees in the bargaining

unit, the Union is entitled to be the sole spokesperson for this group of employees. Employees will be permitted thirty (30) minutes of official time annually to participate in a Union survey regarding representational issues. For this survey, the Union will consult with Management on the content of the survey prior to releasing it to the employees.

5-4 WORKING GROUPS. The Employer shall refrain from unilaterally forming working groups composed of both one or more members of Management and one or more members of the bargaining unit for the purpose of discussing changes in working conditions. If the Employer wishes to form such a group, it shall propose the idea to the Union with the purpose of the group and the groups anticipated duration. The Union will decide if there shall be bargaining unit representation in the group, and who shall be the bargaining unit members in the group. The decisions of such a group shall be the subject of Impact and Implementation bargaining if they relate to working conditions and the Employer chooses to implement them. Nothing shall preclude the Employer from creating working groups which include bargaining unit employees, and which discuss matters other than working conditions.

5-5 RECOGNITION OF UNION OFFICIALS. The Employer will recognize the officers and officials designated by the Union. The Union shall annually supply the Employer, and maintain on a current basis, a written list of Union officers and officials. The Employer shall distribute to each office annually one copy of the list of Union officers, officials, and stewards for posting on an official Union bulletin board.

5-6 NATIONAL REPRESENTATIVES. On notice from the Union, the Employer will recognize representatives of the Union's national office. The Employer shall provide access to Government facilities for representatives of the Union's national office upon advanced request of the Union. Visitors from the national office will follow the same internal security practices that apply to all visitors.

5-7 CONSULTATION MEETINGS. The Parties agree to meet to communicate and exchange points of view on any subject affecting bargaining unit employees. Normally there will be two (2) such meetings each year, but no less than one. By mutual consent, additional meetings may be called to discuss matters of mutual concern. Consultation meetings may be telephonic, VCT or face-to-face.

ARTICLE 6 – MID-TERM NEGOTIATIONS

6-1 GENERAL. Mid-term or mid-contract bargaining is intended to refer to bargaining that occurs during the life of this Agreement. Mid-term bargaining is not intended to alter the terms of this Agreement. Such bargaining is considered a part of the Union's duty to represent employees during the life of the Agreement.

Either party has the right to request negotiations over matters not covered by this Agreement.

Both Parties to this Agreement have the responsibility of conducting negotiations and other dealings in good faith and in such manner as will further the public interest. The Employer agrees to give adequate notice, except in emergency situations, to the Union of its proposal to change or create a personnel policy, practice, or working condition so that negotiations can occur on the proposed change, or on its impact and implementation.

6-2 NOTIFICATION OF CHANGE IN WORKING CONDITIONS. The Parties recognize that changes will regularly occur in the workplace. When changes occur, the Parties will be governed by the following provisions.

The Employer will provide notification to the Union prior to the change and prior to notification to the employees. If the Union wishes to negotiate on the proposed changes, it will notify the Employer and submit negotiation proposals within fourteen (14) calendar days after receipt of the Employer's notice. If the Union needs additional information and/or explanation to evaluate the impact to the bargaining unit, and the request is submitted to the Employer within the fourteen (14) calendar days' time frame, the remaining time will be tolled until the Employer responds to the request. If the Union's proposals are not provided to the Agency within the timeframe as stated above, then the request to negotiate will be deemed waived and closed, and the Agency may proceed with implementation, unless an extension is requested and approved in advance. Extensions to the fourteen (14) days will be granted for Union representatives who are denied requested official time due to mission needs.

6-3 SCOPE OF NEGOTIATION. Subjects appropriate for negotiation between the Parties are personnel policies and practices and other matters relating to or effecting working conditions of employees within the bargaining unit. Additionally, to the extent required by law, case law and Government-wide regulation, the Employer also agrees to negotiate with the Union on any new personnel policies, practices, or matters affecting working conditions prior to implementation if they are negotiable. If the policy itself is not negotiable, its impact upon the employees and procedures for implementing the change will be negotiated.

6-4 GROUND RULES. The ground rules in this Section will apply to any negotiations occurring during the term of this Agreement.

- a. Negotiations shall take place as soon as practicable, but no more than seven (7) calendar days after the Union has provided proposals, unless the Parties mutually agree to extend the period. Bargaining shall occur during regular duty hours, unless otherwise mutually agreed by the Parties.
- b. The Union will be entitled to an equal number of members as Management, normally three (3) or more but not fewer than two (2).

- c. A Chairperson and Alternate Chairperson will be designated in writing for each negotiating committee. If not formally appointed, the highest-ranking Union official negotiating on behalf of the Union will be the Chairperson by default. The Chairperson of each will speak for the respective committee. Other members may speak with the approval of the Chairperson.
- d. Names of the members on each negotiating committee will be exchanged by the Parties in writing prior to the beginning of negotiations. Any changes regarding committee membership will be submitted to the other party no later than one day prior to the next negotiating session, if possible.
- e. Employees negotiating during regular duty hours on behalf of the Union shall be on official duty time in accordance with Article 25 Official Time.
- f. Agency employees on the Union bargaining team will be paid travel and per diem as authorized.
- g. Subject matter experts (SME) are permitted to attend the negotiating sessions by agreement of the Chairpersons for the purpose of presenting information that will help the Parties to resolve issues. A SME may participate in the negotiations only to the extent that the SME's specialized knowledge provides clarifying information. When the SME's services are no longer required, the SME must leave the negotiations.
- h. The location of negotiations will be determined by mutual agreement; in the absence of agreement, negotiations will be virtual, e.g., via conference call or video technology.
- i. When the Parties cannot agree on a negotiable matter and an impasse has been reached, the item shall be set aside. After all negotiable items on which agreement can be reached have been disposed of, the Parties shall again attempt to resolve any impasses. Either or both Parties may seek the services of the Federal Mediation and Conciliation Service. When mediation services do not resolve the impasse, either party may seek the services of the Federal Service Impasses Panel (FSIP).
- j. When the Employer believes that a matter is non-negotiable, it will promptly advise the Union. The Union has the right to appeal to the Federal Labor Relations Authority (FLRA) in accordance with FLRA regulations.
- k. Changes e.g., those related to Agency notifications, will not be implemented until all proposals have been negotiated to agreement through resolution by the FSIP or FLRA for a negotiability appeal, to the extent required by and in accordance with law or unless by mutual agreement.

6-5 AGENCY HEAD REVIEW. The Agency retains the right for all mid-term agreements to be subject to review by the head of the Agency or designee pursuant to 5 USC 7114(c).

6-6 PAST PRACTICE. The Parties agree that as of the effective date of this Agreement, all past practices that conflict with the terms of this Agreement, law or Government-wide regulation

are null and void. Where established past practices exist that are not in conflict with this Agreement or its amendments, the conditions or practices shall continue until either party bargains an end to the practice in accordance with this Article.

ARTICLE 7 - GRIEVANCE PROCEDURE

7-1 COMMON GOAL. The Employer and the Union recognize the importance of settling grievances promptly, fairly, and in an orderly manner that will maintain the self-respect of the employee and be consistent with the principles of good management. To accomplish this, every effort will be made to settle grievances expeditiously and at the lowest level.

7-2 DEFINITION. Grievance means any complaint:

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

7-3 EXCLUSIONS. The following are not grievable:

- a. A claimed violation relating to prohibited political activities.
- b. Retirement, life insurance, or health insurance.
- c. A suspension or removal for national security under 5 USC7532.
- d. Any examination, certification, or appointment.
- e. The classification of a position which does not result in the reduction in grade or pay of the employee.
- f. The termination of a probationary employee.
- g. Personnel actions taken as a result of a reduction-in-force.
- h. Non-selection for promotion from a properly certified list of candidates.
- i. An action that terminates a temporary or term promotion and returns the employee to the position from which the employee was temporarily promoted, or to a different position (not lower in grade) where the employee is informed in advance that the promotion is only temporary.
- j. The substance of the critical elements and performance standards of an employee's position.

- k. Action taken according to the terms of a formal agreement voluntarily entered into by an employee, which assigns the employee from one location to another.
- l. A salary offset determination or garnishment which is reviewable under separate procedures or law.
- m. Complaints concerning Veterans Preference.
- n. Complaints concerning conditions of employment of non-bargaining unit positions.
- o. Proposed actions.
- p. The granting of an award or quality step increase, or the adoption or failure to adopt an employee suggestion.

For those matters which are grievable, this procedure shall be the exclusive grievance procedure for the Parties and the employees. However, nothing in the Section shall prevent employees from appealing adverse actions or actions for unacceptable performance to the Merit Systems Protection Board (MSPB) provided the employee has not initiated a grievance in writing on the matter in accordance with this Agreement. An employee may appeal an adverse action under the negotiated grievance procedure or the MSPB appeal process, but not both.

7-4 UNION REPRESENTATION. An employee or group of employees in the bargaining unit may present a grievance without representation of the Union as long as the Union has been given an opportunity to be present in all grievance meetings and settlement communications which are formal discussions.

When the grievant(s) chooses the Union to assist in processing a grievance, the representative appointed by the Union may represent, assist, and/or advise the grievant(s) at any or all stages of the negotiated grievance procedures. In this respect, the Union representative will be present with the grievant(s) in discussions with appropriate officials.

7-5 GRIEVANCE PROCEDURES. In the interests of expediency and workplace harmony, it is expected but not required that there will be open lines of communication between an employee and his/her supervisor, and that disagreements should normally be discussed between an employee and supervisor in an attempt to resolve issues before resorting to a Step 1 grievance.

- a. Step 1. The Union or an employee who has a grievance will present the grievance in writing to the immediate first-level supervisor within thirty (30) calendar days of the incident that gave rise to the grievance or within thirty (30) calendar days from the time that the grievant learned of the event or should have learned of the matter out of which the grievance arose.

The grievance should contain the following information:

- 1. The name of the grievant(s);
 - 2. Summary and details of the grievance;
 - 3. The law, rule, regulation, or provision of this Agreement allegedly violated;
- and

4. The specific relief/remedy requested.

The employee, his/her representative, if any, and the supervisor/designee, shall, upon request of either party, meet within ten (10) calendar days of submission of the grievance to discuss the issue with the hope of resolution without further action. A written decision will be issued sustaining and/or denying the grievance in whole or in part to the employee and the Union within thirty (30) calendar days of submission of the grievance. If the grievance has been denied, the Union or the employee may file a Step 2 grievance.

- b. Step 2. The State Director/designee receives all grievances at Step 2. The Union or the employee(s) must submit the grievance in writing to the State Director/designee within thirty (30) calendar days of receiving the response identified at Step 1. The grievance should include a copy of the Step 1 decision. Upon request of either party, a meeting will be held within ten (10) calendar days of submission of the grievance to attempt to resolve the grievance. The State Director/designee will respond to the grievance in writing sustaining and/or denying the grievance in whole or in part within thirty (30) calendar days of submission of the grievance. The State Director/designee's decision shall be the final decision by the Employer on the grievance. If the grievance has been denied in any part, the Union may advance the grievance to arbitration in accordance with Article 8, Arbitration.
- c. Employer/Union Grievance. The Employer or Union may file a grievance in writing with the opposite party concerning a particular act or occurrence within thirty (30) calendar days of the act or occurrence or within thirty (30) calendar days of the date that the grieving party became aware or should have become aware of the act or occurrence. This method will be used for grievances filed by the Union where officials below the State Director/designee would not have the authority to resolve the matter. The grievance should include a summary and details of the grievance; the law, rule, regulation, or provision of this Agreement allegedly violated; and the specific relief/remedy requested. Upon receipt of the grievance, the responding party will have thirty (30) calendar days to respond. The Parties are encouraged to attempt to resolve the grievance. Upon either party's request to engage in settlement discussions, the grievance response time will be tolled and will resume if either party notifies the other party in writing that the matter cannot be resolved. After this response, the grievance may be advanced to arbitration in accordance with Article 8, Arbitration.

7-6 TIME FRAMES. If the Employer fails to respond to a grievance within the specified time frame, the grievance moves to the next step unless the Union provides the Agency with an extension in writing. If the Union or the grievant(s) fails to present the grievance to the next higher level within the specified time frame, the grievance is terminated. In the event of a Government furlough/shutdown, the time limits shall be tolled until the furlough/shutdown ends and Agency operations resume. Time limits in this Article may be extended by mutual consent of the Parties.

7-7 SOLICITATION. Union officials will not solicit complaints or grievances.

7-8 PROCEDURAL EXCEPTIONS.

- a. The grievant will normally file the first step grievance with his/her first level supervisor. However, if the deciding official for the grieved action is at a higher level than the first level supervisor, the grievant may start the grievance within thirty (30) calendar days at the step of the deciding official. If the Union or an employee file a grievance at the incorrect level of supervision, the Employer will promptly forward the grievance to the correct level and inform the grievant and the Union. Filing a grievance with the improper level does not create an untimely filing. The Employer, employee and the Union are held to the specified time frames of Section 7-5 Grievance Procedures.
- b. For actions taken which are grievable to the MSPB, (e.g., removals, suspensions of 15 or more days and downgrades) the employee has the option of the negotiated grievance procedure or appeal to MSPB but cannot elect both.

7-9 ALTERNATE DISPUTE RESOLUTION. The Parties recognize the use of Alternate Dispute Resolution (ADR) as a voluntary attempt at dispute resolution. ADR techniques include a broad range of approaches for dealing with conflict and seeking solutions satisfactory to all parties. Either party may propose the use of ADR for resolution of a grievance at any stage of the grievance procedures and prior to invoking arbitration. The party proposing ADR shall submit their proposal to the other party in writing. The non-proposing party may accept or reject the proposal at their sole discretion. The acceptance or rejection shall be in writing and shall be delivered to the proposing party within ten (10) calendar days of receipt of the proposal. If the parties agree to a form of ADR, the party that proposed the ADR shall be responsible for notifying and requesting ADR services such as the Federal Mediation and Conciliation Service. The ADR service will be selected by mutual agreement of both parties. The parties shall execute a written agreement with the provider of the ADR service pertaining to confidentiality of the process before commencing with the process. In the event the ADR process results in resolution of the grievance, such resolution shall be formally documented in a settlement agreement executed by the parties. Either party may terminate the ADR process at any time prior to or during the ADR process by written notice to the other party. The use of ADR will serve to suspend the time limits of this Article between the date the parties enter into an agreement to use ADR and the date a party delivers a notice of termination of the ADR process.

ARTICLE 8 - ARBITRATION

8-1 **CONDITIONS FOR INVOKING ARBITRATION.** If the final decision on a grievance processed under the Negotiated Grievance Procedure is not acceptable, or the time limit when the final decision should have been received elapses, the issue may be advanced to arbitration. The grieving party, Union or the Employer, will send notification to the other party that it is invoking arbitration within thirty (30) calendar days following receipt of the decision at Step 2 (see Article 7-5b) or the response mentioned by Article 7-10. Official time will be granted to the Union to participate in the arbitration process in accordance with Article 25 Official Time.

8-2 **SELECTING AN ARBITRATOR.** Within seven (7) calendar days after receiving the notification of invoking arbitration, unless additional time is agreed to by both the Union and the Employer, the party invoking arbitration will request and pay for the Federal Mediation and Conciliation Service to furnish the Parties a Subregional list of seven (7) impartial persons qualified to act as arbitrators who have Federal experience. An informational copy of the request will be sent to the other party by the Federal Mediation and Conciliation Service. The Employer and the Union shall agree, within twenty-one (21) calendar days after receipt of the list, upon one of the listed arbitrators. If they cannot agree, they will each strike one name from the list and shall repeat the procedure. For the first arbitration after the effective date of this Agreement, the grieving party will strike first. Subsequent arbitrations will alternate. The remaining individual shall be the duly selected arbitrator. The arbitrator's decision shall be binding on the Parties, unless either party files an exception to an award with the Federal Labor Relations Authority under regulation prescribed by the Authority. If for any reason either party refuses to participate in the selection of the arbitrator, the other party chooses the arbitrator.

8-3 **PROCEDURE.** The Parties must mutually agree to any procedure other than a full arbitration hearing. Upon selection of an arbitrator in a particular case, the respective representatives of the Parties will communicate with the arbitrator and jointly select a mutually agreeable date for the arbitration hearing, normally within six (6) months, dependent upon the arbitrator's schedule.

8-4 **SCOPE OF ARBITRATOR'S AUTHORITY.** As necessary to reach a decision, the arbitrator shall have the authority to interpret this Agreement. The arbitrator shall have no authority to add to, subtract from, alter, or modify any terms of the Agreement, Agency instructions, and applicable laws.

8-5 **TIME LIMIT.** The goal will be for the arbitrator to render a decision and award to the Employer and the Union as quickly as possible, typically no later than thirty (30) calendar days after the conclusion of the hearing or post hearing briefs, whichever is later, unless the Parties otherwise agree.

8-6 **FEES AND EXPENSES.** The arbitrator's fees and expenses, if any, shall be borne by the losing party. If any decision is not clearly favoring one party's position over the other, the arbitrator may specify the costs be split proportionate to the arbitrator's decision. If either party desires a copy of a transcript of an arbitration hearing, the party is solely responsible for paying for its own copy of the transcript.

ARTICLE 9 - POSITION DESCRIPTIONS

9-1 INTENT. Each employee is entitled to a complete and accurate position description. Any employee shall be afforded the opportunity to meet with his/her supervisor for the purpose of reviewing his/her position description for accuracy. If revision is necessary, the employee will be permitted to participate in the process.

9-2 POSITION DESCRIPTION CHANGES.

- a. When the Employer approves a new description for a classified position that is occupied, it shall provide an informational copy of the position description to the Union.
- b. Any employee who feels that he/she is performing duties outside the scope of his/her position description may request, through the immediate supervisor, that the position be reviewed. If the employee is not satisfied with the review, he/she may file a grievance over position description inaccuracies.

9-3 CLASSIFICATION APPEALS. Employees may dispute their job title, series, grade level and pay plan through a classification appeal. This may result in an upgrade, downgrade or the position remaining at the same grade. Employees may appeal to the Department and if not satisfied, may then appeal to the Office of Personnel Management (OPM); or they may appeal directly to OPM. Employees may only appeal to one office at a time. If they choose to appeal to OPM first, OPM's decision is final and binding and employees may not then appeal to the Department. An employee will receive written notification from the Department if a decision on the employee's appeal cannot be made within sixty (60) calendar days of receipt. If the employee does not wish to wait, the Department will forward the appeal directly to OPM on his/her behalf. Employees may not file a classification appeal over the duties listed or not listed in their position description.

9-4 DOWNGRADES. Employees who have been involuntarily downgraded as a result of a reduction-in-force or a reclassification may appeal the classification of their new position. Appeal options may include: to the Department; through the Department to OPM; directly to OPM, through the negotiated grievance procedure or to the Merit Systems Protection Board. Saved grade and pay retention rights shall be afforded to eligible employees in accordance with the relevant statutes and regulations.

ARTICLE 10 - INCENTIVE AWARDS

10-1 PURPOSE AND POLICY.

- a. The Parties agree that a motivational incentive awards program is a necessary and useful mechanism through which employees' accomplishments shall be recognized. The Employer will objectively recognize and reward contributions which increase productivity, empower employees, and promote team building. The Employer will also ensure the fair and equitable distribution of these awards, including QSIs, between bargaining and non-bargaining unit employees. Awards will be used to encourage creativity, promote initiative, improve morale, and be sufficiently flexible so as to provide incentive to employees to enhance their performance, resulting in better quality service to our customers.
- b. The Agency will administer its awards program in accordance with applicable law, rule, Government-wide regulation, and this Agreement.
- c. Awards will be based solely on merit factors and centered on the principles of fairness, consistency, objectivity, and equity. To ensure these principles are observed and credibility is maintained in the system, awards will be publicized.
- d. Employees who perform community service activities, which promote volunteerism, may be recognized for their contributions.

10-2 TYPES OF AWARDS. Awards may include, but are not limited to, the following: performance awards, quality step increases (QSIs), time off awards, on-the-spot awards, and special act awards to individuals or groups. Awards must be in accordance with Government-wide laws, rules, regulations, and this Agreement.

10-3 GROUP AWARDS. Agency initiatives accomplished by teams of employees, rather than individuals working alone, should be recognized with a group award.

10-4 QUALITY STEP INCREASE. To be considered for a QSI, an employee must:

1. Occupy a position which is eligible for WGIs (i.e., GS employees occupying permanent positions);
2. Be at the full performance level of his/her position;
3. Be below step 10 of his/her grade level;
4. Have performed in the same grade and type of position for at least twelve (12) months before the end of the appraisal cycle;
5. Have demonstrated sustained performance of high quality and have received a rating of record of at least Fully Successful for the most recent performance year;
6. Have demonstrated sustained performance of the highest quality, significantly and demonstrably above the expectations defined at the Fully Successful level of his/her performance plan;

7. Have achieved accomplishments that contributed substantially to the organization's goals, commensurate with the classification of their position;
8. Be expected to continue the same high level of performance; and
9. Not have received a QSI within the previous fifty-two (52) weeks.

The Parties agree to negotiate a MOU to substitute for this Section of the Agreement if the performance system changes from the current two-tier system.

10-5 AWARDS REVIEW. The Union may periodically evaluate and review the Employer's awards program and make recommendations to ensure effectiveness and understanding of the awards program.

10-6 LIST OF AWARDS. The Employer will annually provide two lists of awards to the Union representative designated in Section 5-1 of this Agreement. The list of bargaining unit employee awards will contain the name of the employee along with the employee's individual grade, location, and the amount(s) and type(s) of award(s). For non-bargaining unit employee award recipients, the list will include only the type of award, amount (if applicable) and organization. The lists for the previous fiscal year will normally be provided by the following March 1st.

ARTICLE 11 - MERIT PROMOTION PLAN

11-1 PROCEDURES. All actions under the Merit Promotion Plan will be taken in accordance with 5 USC 2301, this Agreement and, to the extent that they do not conflict, Department and Agency regulations.

11-2 VACANCY ANNOUNCEMENTS.

- a. All vacancies in the bargaining unit which are to be filled competitively under the Merit Promotion Plan will be announced through USA Jobs or its successor. A link to the vacancy announcement will be distributed to the Union and all employees through the email system. Vacancy announcements will contain the grade, position title, security clearance requirements, organizational location and whether the position is permanent or temporary.
- b. Merit promotion job vacancy announcements for bargaining unit vacancies will be open for a minimum of ten (10) business days from the date of the announcement.
- c. Employees, who are on extended leave, are responsible for notifying their supervisor if they want to be considered for promotional opportunities while they are on travel or leave. The employee shall leave a telephone number and/or e-mail address with his/her supervisor. The supervisor is responsible for contacting the employee to provide vacancy information.

11-3 NON-COMPETITIVE APPOINTMENTS. The Employer also has the right to fill a position through promotion, reassignment, demotion, transfer, reinstatement, or any other exception to the Merit Promotion Plan. However, employees cannot be transferred or reassigned to positions with greater promotion potential than they currently hold or previously held on a permanent basis in the competitive service. With the exception of performance-based actions, official notice and opportunity to bargain will be provided to the Union for involuntary reassignments and involuntary transfers.

11-4 EVALUATION PROCESS. After the initial eligibility and qualification determination by the Human Resources Specialist/Assistant, evaluations of applications will be based solely on job-related requirements and applied fairly and consistently.

The Employer will develop standard interview questions to be asked for each interview under a vacancy, however follow-up questions may be asked.

11-5 MERIT PROMOTION VACANCY ANNOUNCEMENT INFORMATION AVAILABILITY.

- a. The following information will be made available to employees at their request, who applied for the position in question and were not selected:
 1. Explanations and supporting regulations concerning the Merit Promotion Plan.
 2. The qualifications required for a position.
 3. If the employee was considered basically qualified (i.e., met the minimum qualification requirements).
 4. If the employee was among the best qualified (i.e., one of those in the group

- from which the selection was made).
5. How the employee was evaluated by the merit promotion panel or human resources specialist.
 6. Cut-off score for best qualified.
 7. Scores of other candidates (not identified by name).
 8. Number of qualified candidates.
 9. Number of candidates certified as best qualified.
 10. The name of the individual hired.

- b. Upon request, employees not selected for a position will receive feedback from the selecting official on areas to improve in order to increase the likelihood of consideration in the future.

11-6 RIGHT OF REVIEW. The Union has a right to review the records listed in Section 11-5 (a) above for any competitive merit promotion actions for bargaining unit positions. The Union may request additional information in accordance with 5 USC 7114 (b)(4).

11-7 CAREER LADDER PROMOTIONS.

- a. A career ladder is an established grade progression through which employees may advance to reach the full-performance level of a particular position. Career ladder promotions are contingent upon the fulfillment of the following conditions:
 1. the required time-in-grade requirement (52 weeks);
 2. the required amount of experience performing duties at the employee's current grade level (52 weeks);
 3. a rating at the fully successful level on the most recent rating of record, and
 4. demonstrated the ability to perform at the next higher-grade level through performance of activities at the current grade level.
- b. Career ladder promotions will be effective at the earliest eligibility date when these requirements have been met. The supervisor will recommend promotion in time for the employee to receive the promotion on his/her earliest eligibility date. In the event that processing is not timely, the promotion will be made retroactive to the date it should have been affected.
- c. Discussion during the quarterly performance reviews will include guidance on employee strengths and weaknesses with regard to career ladder advancement.

ARTICLE 12 - EQUAL EMPLOYMENT OPPORTUNITY

12-1 GENERAL. The Employer and the Union agree that no employee will be discriminated against because of race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information (including family medical history), marital status, political affiliation, sexual orientation, labor organization affiliation or non-affiliation, status as a parent, or any other non-merit based factor, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available.

12-2 COMPLAINT PROCESS. Employees have the right to engage in the EEO process and may do so by contacting the Rural Development Civil Rights office directly. Employees begin the EEO complaint process and satisfy the forty-five (45) calendar day deadline, by contacting an EEO Counselor (by having a phone conversation, leaving a voicemail, sending an email, or using the Agency's eFile Module or successor) within forty-five (45) calendar days of the date of the incident that gave rise to a complaint or, if it is a personnel action, within forty-five (45) calendar days of its effective date. Specific information on "the Rural Development EEO complaint process" can be found on the internet. Employees are entitled to a reasonable amount of duty time to engage in the EEO process, if otherwise on duty. No employee will be reprimed against for participation in EEO activity.

12-3 UNION REPRESENTATION. The Union will be given an opportunity to have a representative present at any formal discussions, e.g., settlement discussions, with bargaining unit employees during the EEO process. The Employer will give reasonable advance notice to the Union of formal discussions. A bargaining unit employee may request the presence of a Union representative when discussing a problem of alleged discrimination with an Equal Employment Opportunity (EEO) Counselor or when processing an EEO complaint.

ARTICLE 13 - DISCIPLINARY AND ADVERSE ACTIONS

13-1 GENERAL.

- a. The objective of disciplinary and adverse action is to correct and improve employee behavior and to fairly and equitably maintain an orderly, competent, and productive organization.
- b. All disciplinary and adverse actions against employees must be based on just cause, be consistent with applicable laws and regulations, and be fair and equitable.
- c. Progressive disciplinary and performance measures should be used, whenever reasonable, prior to taking formal disciplinary or adverse actions to ensure the actions are proportionate to the offense or unacceptable performance.

13-2 POLICY.

- a. The Employer retains the right to discipline.
- b. Any discipline, warnings, counseling, or admonishments demand the exercise of responsible judgment so that the action imposed on an employee is proportionate to the character of the offense.
- c. Discipline, warnings, counseling, and admonishments will be initiated within a reasonable time following the discovery of the conduct precipitating the action.
- d. Instances of misconduct will not be allowed to continue without corrective action merely to increase the severity of the punishment.
- e. In emergencies, notwithstanding any provisions of this Article, the Employer has the right to take any action necessary to protect the health and safety of the work force.
- f. Warnings, counseling, or admonishments are not forms of disciplinary or adverse action.

13-3 DISCIPLINARY ACTIONS

- a. For the purpose of this Agreement, disciplinary actions refer to letters of reprimand and suspensions of fourteen (14) days or less.
- b. Reprimands -- A reprimand is a written letter to an employee based on unacceptable conduct. Prior notice is not required before the issuance of a reprimand. A reprimand shall state the specific reasons for the action. A reprimand will remain in an employee's Official Personnel Folder (OPF) for up to two (2) years, but may be removed by the Employer, at its sole discretion, anytime within the two-year period. The letter shall inform the employee that he/she has the right to file a grievance under the negotiated grievance procedure, the right to be represented by the Union and contain the name and phone number of the Union representative designated in accordance with Section 5-1 of this Agreement, where the letter will be retained, the

maximum length that it may be retained, and if the letter may be counted as a prior offense in determining the appropriate penalty for any future offense.

- c. Suspensions of 14 days or less -- An employee against whom a suspension of fourteen (14) days or less is proposed is entitled to:
 1. Advance written notice of the proposed action that specifies the reasons for the proposed action and informs the employee of his/her rights to review the material that was relied upon to support the reason for the action and includes the name of the Union representative designated in accordance with Section 5-1 of this Agreement and his/her contact information;
 2. A reasonable time, but not less than seven (7) calendar days, to respond in writing, which may include affidavits and other documentary evidence in support of his/her response and/or request an oral reply. The oral reply is not a formal hearing with examination of witnesses;
 3. Be represented by him/herself, the Union, an attorney or other personal representative;
 4. Receive and review all material that was relied upon in proposing the action; and
 5. A written decision at the earliest practicable date, containing the specific reasons for the decision, informing the employee of his/her right to appeal the decision through the negotiated grievance procedure or any other statutory appeal procedure. The decision will also contain the name of the Union representative designated in accordance with Section 5-1 of this Agreement and his/her contact information, and the name of the Employer official to whom any grievance should be directed.

13-4 REMOVAL, SUSPENSION FOR MORE THAN FOURTEEN (14) DAYS, FURLOUGHS OF THIRTY (30) DAYS OR LESS, REDUCTIONS IN PAY OR GRADE. The following applies to an employee in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less. Such an employee is entitled to:

1. Thirty (30) calendar days advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;
2. The notice of proposed adverse action will also include the name of the Union representative designated in accordance with Section 5-1 of this Agreement and his/her contact information. If an employee chooses to be represented in an adverse action procedure, his/her representative will have the right to be present at all conferences at which the employee answers the specifications in the notice of proposed adverse action;

3. Fourteen (14) calendar days to respond in writing, which may include affidavits and other documentary evidence in support of his/her response and/or request an oral reply;
4. Be represented by him/herself, the Union, an attorney or other personal representative;
5. Receive and review all material that was relied upon in proposing the action; and
6. A written decision at the earliest practicable date, containing the specific reasons for the decision, informing the employee of his/her right to appeal the decision through the negotiated grievance procedure or any other statutory appeal procedure. The decision will also contain the name of the Union representative designated in accordance with Section 5-1 of this Agreement and his/her contact information, and the name of the Employer official to whom any grievance should be directed.

13-5 DOUGLAS FACTORS. The Employer will apply the relevant Douglas factors when determining a penalty for actions taken under Section 13-4 of this Article. The Douglas factors are:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's work ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with any applicable agency table of penalties;
8. The notoriety of the offense or its impact upon the reputation of the agency;
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10. Potential for the employee's rehabilitation;
11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or

provocation on the part of others involved in the matter; and

12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

13-6 APPEALS. An employee may appeal an adverse action under the negotiated grievance procedure or to the Merit Systems Protection Board, but not both. Disciplinary actions and admonishments are grievable in accordance with Article 7 Grievance Procedure.

13-7 ADMINISTRATIVE LEAVE

- a. In accordance with law, rule and regulation, the Employer may place an employee on paid administrative leave when the Employer determines that an employee must be removed from the workplace while under investigation or during a notice period, i.e., the period after the employee has received a proposed notice of disciplinary/adverse action before a final decision is made and takes effect. Administrative leave may be used when the Employer has determined that the employee's continued presence may:
 1. Pose a threat to the employee or others;
 2. Result in the destruction of evidence relevant to an investigation;
 3. Result in loss or damage to Government property; or
 4. Otherwise jeopardize legitimate Government interests.
- b. Before using administrative leave, the Employer will consider:
 1. assigning the employee to duties in which the employee no longer poses a threat;
 2. allowing the employee to take leave for which the employee is eligible;
 3. if the employee is absent from duty without approved leave, carrying the employee in absence without leave status; and
 4. for an employee subject to a notice period, curtailing the notice period if there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed.

ARTICLE 14 - ACTIONS BASED ON UNACCEPTABLE PERFORMANCE

14-1 GENERAL

- a. An action based on unacceptable performance is one which reduces the grade of an employee, or removes an employee, because the employee's performance fails to meet established performance standards in one or more critical elements of the employee's position.
- b. This Article applies only to employees who have completed their probationary or trial period.
- c. Instances of poor performance will not be allowed to continue merely to increase the severity of the action.
- d. The procedural requirements prescribed by this Article will be consistent with Agency regulations and existing laws as they apply to processing unacceptable performance actions.

14-2 OPPORTUNITY TO DEMONSTRATE ACCEPTABLE PERFORMANCE/ PERFORMANCE IMPROVEMENT PLAN

- a. As early as practical but before performance falls below the standards defined at the fully successful level, the employee's attention will be called to areas of performance needing improvement. At any time during the rating period, if the supervisor identifies that an employee's performance in one or more critical elements is at an unacceptable level, the supervisor will notify the employee of the areas of performance needing improvement and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance. Steps will be initiated to assist the employee in meeting performance standards.
- b. Prior to being given an opportunity to demonstrate acceptable performance, an employee may request a reassignment or change to a lower grade due to his/her inability to perform the duties of his/her current position. The Employer will make a reasonable effort to reassign the employee, including to a lower-graded position, which the Employer believes the employee can successfully perform.
- c. The opportunity to demonstrate acceptable performance will be developed in writing and the employee will be given two working days to comment on the opportunity to demonstrate acceptable performance notification prior to its implementation. Final authority for the establishment and the content of the opportunity to demonstrate acceptable performance rests with the Employer.
- d. The written opportunity to demonstrate acceptable performance notification will include the following:
 1. Identification of the critical element(s) and performance standard(s) for which performance is unacceptable.

2. Specific examples of how the employee's performance is failing to meet the standard.
 3. Specific improvements/actions that the employee must do to bring performance up to an acceptable level.
 4. A statement that the employee has a reasonable period of time, but never less than sixty (60) days, in which to bring the performance up to an acceptable level.
 5. The steps the supervisor will take to assist the employee's progress.
 6. Notification that unless the employee's performance in the critical element(s) at issue improves and is sustained at an acceptable level of performance, the employee may be demoted or removed from employment.
- e. All paper copies of documentation provided by the Employer to the employee will be in duplicate for the employee to provide to the Union at his/her discretion.
- f. Once the opportunity to demonstrate acceptable performance time period has ended, the Employer will provide the employee with a written notice of his/her determination of the employee's level of performance at that time.
1. If successful, it will include the requirement that the employee maintain successful performance for one year.
 2. If acceptable performance is not achieved, steps will be taken in accordance with Sections 14-3, 14-4, and 14-5 below.

14-3 PROPOSED ACTION.

- a. In all cases of a proposed action to downgrade or remove an employee for unacceptable performance, the employee will be given written notice of the specific reasons of unacceptable performance at least thirty (30) calendar days in advance of the action.
- b. The written notification shall include the following:
 1. the action being proposed;
 2. specific instances of unacceptable performance by the employee on which the proposed action is based;
 3. the critical element and performance standard;
 4. the steps the supervisor took to assist the employee's progress;
 5. the right to represent him/herself, have a Union representative, attorney, or other representative;
 6. the employee's right to answer orally and/or in writing;

7. the name of the deciding official to whom the reply should be made;
 8. the employee is entitled to review all the evidence relied upon by the Employer in preparing the notice; and
 9. the employee is entitled to a written final decision on the proposed adverse action.
- c. All paper copies of documentation provided by the Employer to the employee will be in duplicate for the employee to provide to the Union at his/her discretion.
 - d. The Union or employee will not grieve the substance of this notice; however, a final decision may be grieved.

14-4 EMPLOYEE RESPONSE.

- a. The employee will be given the opportunity to respond orally and/or in writing prior to a final decision. The employee will be given fourteen (14) calendar days to respond in writing, which may include affidavits and other documentary evidence in support of his/her response and the same fourteen (14) calendar days to request an oral reply.
- b. If the employee elects to make an oral reply, the Employer will provide a written summary of the oral reply to the Union and the employee if requested within seven (7) calendar days of the oral reply.

14-5 DECISION LETTER. The deciding official shall:

1. Address disputed facts, if any, raised in the employee's reply by stating the reasons why each disputed fact was rejected or accepted. This obligation only applies to the extent that the dispute over facts in the employee's reply are reasonably clear.
2. Specify the action to be taken and the effective date.
3. Notify the employee in writing of any appeal, grievance, or complaint rights.

14-6 TIME EXTENSIONS. Within the parameters established by 5 CFR 432, any of the time limits set forth in this Article may be extended or waived by mutual agreement of the Parties.

14-7 RECORD RETENTION. If an employee's performance improves as a result of an opportunity to demonstrate acceptable performance and continues to be fully successful for one year from the commencement date of the opportunity to demonstrate acceptable performance, all documentation of the unacceptable performance shall be destroyed in accordance with Federal Records Management regulations. The Employer will notify the Union when the record(s) have been destroyed.

ARTICLE 15 - EMPLOYEE ASSISTANCE PROGRAM

15-1 GENERAL. The Employer maintains an Employee Assistance Program (EAP), which provides counseling, information and other resources for employees troubled by alcoholism, substance abuse, emotional illness, marital/family problems, or financial problems. The Employer will make employees and supervisors aware of the program at least annually.

15-2 ASSISTANCE OPPORTUNITY. Employees whose performance is negatively affected as referenced above will be given a reasonable opportunity to obtain professional assistance in overcoming the problem.

15-3 COST FOR SERVICES. The EAP offers referral services to outside, local alcohol treatment programs, family counseling, and substance abuse treatment programs, many of which are available free, or at a nominal cost.

15-4 LEAVE POLICY. It is the policy of the Employer to grant the use of annual leave and/or sick leave, including advanced leave in accordance with RD Instruction 2066-A Rural Development Leave Program for the purpose of treatment or rehabilitation.

15-5 DISCIPLINARY AND ADVERSE ACTIONS. The Employer may take appropriate disciplinary or adverse action consistent with law, applicable regulations, and all provisions of this Agreement. If the employee makes the responsible supervisor aware of his/her EAP involvement, that involvement will be considered in determining any appropriate disciplinary and adverse action.

ARTICLE 16 - TRAINING

16-1 COMMON GOAL. The Parties recognize the value of training or retraining to assure continuing development to maintain the competence and skill level of the work force.

16-2 OUTSIDE TRAINING. The Employer is committed to providing development and training opportunities to all employees. The Employer also encourages the continuous upgrading and maintenance of skills. For those employees enrolled in work-related classes not scheduled by the Employer, the Employer agrees to make a reasonable effort to enable an employee to adjust his/her work schedule if feasible and within budgetary limitations, in order to attend. Approval will not be denied for arbitrary or capricious reasons.

16-3 ON-THE-JOB TRAINING. If an employee is required to train a new employee, the supervisor will make workload adjustments to compensate for the time spent training the new employee. If an employee's work falls behind due to training another employee, the supervisor will meet with the employee for the purpose of agreeing on shifting work, changing priorities or other adjustments needed to bring the work up to date.

16-4 SCHEDULING. Appropriate training courses, seminars, conferences, and meetings shall be scheduled, whenever possible, during work hours to allow the employees the opportunity to gain information, education, and training.

16-5 USE OF EQUIPMENT. The Employer agrees to make available to all employees enrolled in approved training courses academic aids such as desk calculators, typewriters, computers, etc., if available on the premises, at mutually agreeable times during the employee's non-duty hours.

16-6 AGLEARN. AgLearn or successor provides a variety of training courses at no cost to the Employer or employees. Its use is encouraged before seeking outside sources. AgLearn must be used for information technology software training prior to requesting training from outside vendors.

16-7 NEW POSITIONS. Employees assigned, transferred, selected, or promoted to a new position will be given appropriate training in order to be able to satisfactorily perform the new position. Further, employees returning to measurable tasks from approved absences of a long duration or from a detail shall be given a reasonable amount of time to familiarize themselves with policies, procedures, and other job-related communications issued during the absence.

16-8 RIF TRANSITION SERVICES. Employees affected by a reduction-in-force will be provided transition services to include career transition workshops, training, and skills development as referenced in Departmental Regulation 4030-330-002 Specialty Selection Priority Programs or successor.

16-9 TRAINING REQUESTS. Employees will be notified of the decision to approve or disapprove their training requests at the first line supervisory level, normally within fourteen (14) calendar days. If the training request is denied, the employee will be provided the reasons for the denial. Upon request, the reasons will be provided in writing. If the sole reason for the denial is that the training is not sufficiently work-related, then the employee may request review from the next higher-level management official. The denial may often be budget based; in which case the employee may resubmit the request at a later date when the budget is known.

ARTICLE 17 - LABOR-MANAGEMENT RELATIONS TRAINING

17-1 UNION-SPONSORED TRAINING SESSIONS. The Employer agrees to grant official time to employees who are Union officials for the purpose of attending Union-sponsored and other training sessions, provided the training is representational in nature, and of concern to the employees in their capacities as Union representatives. Official time for this purpose will not exceed sixty (60) hours per Union official, two hundred forty (240) hours total, per fiscal year, unless otherwise mutually agreed. A written request for official time will normally be submitted at least (30) thirty days in advance, by the Union representative designated in accordance with Section 5-1 of this Agreement, to the State Director or designee. The request will contain information from the vendor addressing the duration, purpose, and nature of the training.

17-2 EMPLOYER/UNION-SPONSORED TRAINING SESSIONS. The Employer agrees to conduct joint Employer-Union training sessions on official duty time when a new or successor Agreement is established. Such training shall be primarily concerned with orienting and briefing Union and Management officials on the requirements and administration of this Agreement. The time used for these training sessions does not come from the Union's hours listed in Section 17-1 above.

ARTICLE 18 - WORKWEEK/SCHEDULES

18-1 GENERAL. The Parties recognize the benefits to the use of Alternative Work Schedules (AWS). The Parties will make every effort to accommodate Employer and employee needs when assigning employees to work schedules. This Article will be administered in accordance with the provisions of RD Instruction 2051-F Hours and Pay, Subpart F Hours of Duty or successor, Oregon Administrative Notice 1466 Hours of Work and Flextime Requirements or successor, and the provisions set forth in this Article. The Parties agree that AWS are substantively negotiable.

18-2 DEFINITIONS.

- a. Basic Work Requirement. The number of hours excluding overtime hours an employee is required to work or otherwise account for.
- b. Tour of Duty. The hours of a day and the days of an administrative workweek that make up an employee's regularly scheduled basic workweek. The basic workweek and hours are limited to Monday through Friday between the hours of 6:00 a.m. until 6:00 p.m.
- c. Official Hours. The hours when an office is open for business to serve customer needs. This is normally from 8:00 a.m. until 4:30 p.m.
- d. Core Hours. Core hours are the designated hours in a workday (9:00 a.m. to 2:30 p.m.) when all full-time employees must be present during their normal tour unless on approved leave or scheduled lunch period, or the tour of duty has been changed in accordance with RD Instruction.
- e. Credit Hours. Those hours within a Flexible Work Schedule (FWS) that an employee elects to work in excess of their basic work requirement so as to vary the length of a workweek or workday. Although credit hours are worked voluntarily, and are not ordered overtime, they are to be worked with the approval of the supervisor. Employees on Compressed Work Schedule (CWS) are not eligible to earn credit hours. Credit hours may be earned only by employees who work a flexible schedule. Credit hours may only be earned Monday through Friday between the hours of 6:00 a.m. to 6:00 p.m. unless by exception to attend night meetings with supervisory approval.
- f. Flexible Work Schedule (FWS). FWS consist of workdays with core hours and flexible hours. Core hours are the designated period of the day when all employees must be at work. Flexible hours are the part of the workday when employees may (within limits or time bands) choose their time of arrival and departure. Within limits set by the Agency, FWS can enable employees to select and alter their work schedules to better fit personal needs and help balance work, personal, and family responsibilities. For further information refer to Section 18-8 GENERAL PROCEDURES below.
- g. Lunch Band. The band of time between the hours of 11:00 a.m. to 2:00 p.m. that a lunch period is scheduled. 30, 45, or 60-minute lunch period options are available.

18-3 BREAKS. Full time and part time employees who work an 8-hour (or greater) workday shall be allowed two (2) paid breaks each workday. These full time and part time employees are entitled to one fifteen (15) minute paid break, approximately midway between their arrival time and their scheduled lunch break, and employees are entitled to one fifteen (15) minute paid break, approximately midway between their scheduled lunch break and their departure time. Employees on breaks shall not interfere with the work of employees not on breaks. Break time shall not be accumulated (banked) for future use or used in conjunction with the beginning or ending of a workday or with scheduled lunch times.

18-4 WORK SCHEDULES. The Parties agree that the AWS identified in RD Instruction shall be available for use statewide subject to the advance approval of the Employer. The Employer has the right to deny AWS requests in order to ensure office coverage at all times.

18-5 CHANGING WORK SCHEDULES. When they are necessary to accomplish the work objectives of the unit, the Employer may make temporary modifications or restrictions on the use of AWS for employees. The changes must be administered fairly and equitably in the work unit affected. The Employer will consult with the affected employee over schedule changes in order to address any personal hardships that may result. Modifications or restrictions on the use of AWS for employees shall be based on, but not be limited to, one or more of the following:

- a. placement on leave restriction (The Agency must provide the reason and follow all OPM rules of notification);
- b. abuse of the AWS;
- c. new employees (normally those with less than 1 year of service in that position) needing close supervision for the initial training required to understand and perform the duties of the position,
- d. employees with serious deficiencies in the performance of their primary tasks over a period of at least one month, to the extent that the level of their performance would constitute grounds for an unsatisfactory performance rating (or placement on a Performance Improvement Plan), for whom the deficiency would be addressed by a temporary modification, removal, or restriction of the AWS; or
- e. office coverage.

18-6 TRAINING AND TRAVEL. When training or travel prevents the employee from working his/her established tour, employees generally will need to adjust their work schedules, regardless of the number of days involved and the type of work schedule the employee has chosen. If training does not last eight (8) hours, employees will need to account for the shortage by:

- a. Taking leave;
- b. Taking available compensatory time off or credit hours; or
- c. If approved in advance and feasible, by performing work before or after the training.

18-7 CREDIT HOURS.

- a. Credit hours are worked on a voluntary basis. However, they are worked with the approval of the supervisor.
- b. Credit hours may be earned by employees on an FWS. Employees on a CWS may not earn credit hours.
- c. Full-time employees may carry over no more than twenty-four (24) credit hours from pay period to pay period.
- d. Part-time employees may also earn credit hours by working extra hours beyond their normal tour of duty. Part-time employees are limited on a pro-rata basis and may carry over an amount of credit hours equal to one-fourth of their biweekly work requirement.
- e. Credit hours may be earned in the following manner:
 1. 15-minute increments;
 2. Monday through Friday between the hours of 6:00 a.m. to 6:00 p.m.; and
 3. after 6:00 p.m. to 12:00 a.m. to attend night meetings with supervisory approval.
- f. There is no limit on the number of credit hours that may be earned in a workday so long as the total credit hours and regular tour of duty do not exceed twelve (12) hours, exclusive of the lunch period. Employees can exceed twenty-four (24) credit hours during the pay period, but only twenty-four (24) of those may be carried over to the next pay period. For example, when an employee begins the pay period with twenty-four (24) credit hours, works eight (8) credit hours during the same pay period, takes the last day of the pay period off, using up the excess credit hours, he/she will not carry over more than twenty-four (24) hours.
- g. Credit hours may not be converted to compensatory time or overtime pay.
 1. There is no time limit for using credit hours. However, should an employee leave Rural Development, he/she should use the hours before his/her last day of service, or the hours will be paid in a lump sum at the employee's current rate of pay.

18-8 GENERAL PROCEDURES.

- a. Supervisors
 1. After receipt of an employee's AD-2001, Designation of Tour of Duty, or successor, the supervisor will determine whether conditions such as office coverage restrict AWS participation.
 2. When a supervisor cannot honor an employee's request, the supervisor will meet with the employee to reach a mutually acceptable alternative.

3. If an acceptable alternative cannot be reached, the supervisor will issue an approval or disapproval of the requested work schedule change. The employee and/or the Union has the option of grieving the decision.
4. Tours of duty, if changed for days when employees are required to attend night meetings, will be completed no later than 12:00 a.m.

b. Employees

1. Employees should submit a work schedule in writing to their supervisor for approval on form AD-2001, Designation of Tour of Duty, or in WebTA or successor. This schedule remains in effect until the employee requests and receives approval for a new schedule. An employee's scheduled tour of duty must be completed by 6:00 p.m.
2. Employees should choose a 30, 45, or 60-minute lunch period. This choice should be documented on the form AD-2001, Designation of Tour of Duty, or in WebTA or successor. On occasion, with supervisory approval, employees on a Maxiflex work schedule may expand their lunch period within the established lunch band and make it up at the end of the day without a charge to leave.
3. Employees should observe designated duty hours and must be punctual in reporting for work and returning from lunch.
4. The employee may make changes to his/her work schedule with supervisory approval and in accordance with this Article because of workload, training, attendance at meetings, travel, personal needs, etc.

ARTICLE 19 - OVERTIME

19-1 GENERAL. Overtime and compensatory time off in lieu of overtime pay will be administered in accordance with the applicable laws and regulations including RD Instruction 2051-H, Hours of Pay, Subpart H, Overtime Pay or successor; the overtime provisions of Title 5, CFR, Part 550 and Part 551, and any amendments/revisions thereafter; and the provisions set forth in this Article.

Overtime under this Article must be approved by the Employer in advance of the work being performed. Extenuating circumstances may be discussed after the fact on a case-by-case basis.

19-2 PRINCIPLES.

- a. The overtime system will be based upon voluntary participation supplemented by a mandatory backup system administered in a fair and equitable manner in accordance with this Agreement.
- b. In no case will overtime work be assigned to any employee as a reward or punishment.
- c. The Employer will make a reasonable effort to assign overtime work to bargaining unit employees performing the task(s) during the workday.
- d. All qualified employees who normally perform that work shall have an equal opportunity to share in voluntary overtime.

19-3 PROCEDURES FOR ASSIGNMENT OF OVERTIME.

- a. The Employer will first seek eligible volunteers to perform needed overtime work. Management will exhaust voluntary overtime options prior to requiring mandatory overtime.
- b. In the event an employee does not desire to work mandatory overtime, the Employer shall make every effort to accommodate the employee's request to be excused from overtime work, provided that another qualified employee is available for the overtime.
- c. The Employer may approve a temporary exemption from the requirement to work overtime for medical reasons or other personal hardships provided there are qualified and available employees to work the assignment.

19-4 COMPENSATION.

- a. Employees shall neither be compelled nor permitted to work overtime without compensatory time off or paid overtime in accordance with applicable laws and Government-wide regulations. Fair Labor Standards Act (FLSA) covered employees may not be assigned mandatory overtime which is reimbursed as compensatory time off in lieu of overtime pay.
- b. Employees shall be compensated for any partial hour worked in appropriate

increments of fifteen (15) minutes.

- c. Employees who are required to return to work for a period of overtime unconnected to their regularly scheduled tour or who work irregular or occasional overtime on their day(s) off are entitled to a minimum of two (2) hours overtime pay.

19-5 NOTIFICATION. When the Employer determines overtime is necessary to accomplish organizational needs, the Employer will give an employee as much advance notice as possible in making overtime assignments, but the Parties acknowledge that emergencies, operational exigencies, and unanticipated workload requirements may result in the Employer's inability to give advance notice.

19-6 MEAL PERIOD. Employees have the option of taking an unpaid meal period during overtime provided that the meal period does not result in additional premium pay costs to the Employer.

19-7 RECORDS. Records of overtime work will be made available to the Union upon request in connection with a possible complaint or a grievance.

ARTICLE 20 - OFFICE EQUIPMENT, FURNITURE AND RELOCATIONS

20-1 GENERAL. The Parties recognize that the Employer has needs for improved computer equipment and software, telecommunications, furniture and office equipment. They also recognize that budget constraints may affect the above areas.

20-2 EMPLOYEE INVOLVEMENT. The Parties recognize the benefit of maximizing the Union's pre-decisional and decisional involvement as early as possible.

20-3 FAIRNESS PRINCIPLE. The technology, methods and means of performing work will be carried out fairly and equitably. When possible, employees should have comparable access to automated software and hardware, telephonic equipment, supplies, office furniture, office space, and training. Where it is impractical, due to unusual circumstances or budget constraints, alternate arrangements may be made. This Section shall not be interpreted as prohibiting the flexibility to accommodate differences needed or desired for health and safety concerns, the disabled or individual preferences.

20-4 OFFICE RELOCATION. Office relocations and modifications to office layouts are changes in conditions of employment. Upon selection of a new work site, the Employer will provide official notification of these changes to the Union as required by Article 6 Mid-Term Negotiations of this Agreement.

ARTICLE 21 - UNION USE OF OFFICIAL FACILITIES AND SERVICES

21-1 **SPACE AND EQUIPMENT.** The Employer will allow the Union to use office space for Union business. Equipment provided to all employees for normal day-to-day business may be used by Union officials for representational Union business only. Additionally, the Union representative designated in accordance with Section 5-1 of this Agreement will be provided with a locking file cabinet and secure printing and digital/electronic signature software to ensure confidentiality of records. A locking file cabinet, if needed, will be provided to Stewards.

On advance request and in order to assure confidentiality of conversations related to representational Union business only, the Employer will provide the Union with access to a private office or meeting room, if available, and telephone service in this room. If requested, the Employer will assist the Union in obtaining private meeting space within the office and/or building. When this room is in use by the Union, the Union may post a sign on the door requesting that those using the room not be disturbed.

21-2 **INTERNAL MAIL SERVICE.** The internal mail service of the Employer shall be available for use by the Union to perform representational activities, i.e. U.S. Postal Service metered mail and postage.

21-3 **BULLETIN BOARDS.** The Employer will provide a bulletin board for the exclusive representational use of the Union in each office. The bulletin board will be a minimum size of 24" by 36".

21-4 **COPIES OF AGREEMENT.** An electronic copy of this Agreement will be furnished to each employee within thirty (30) calendar days of the effective date of this Agreement. The Agreement will also be posted electronically on the Agency's internal SharePoint or successor. The Union will be permitted to print hard copies as required by third parties and for use by Union representatives.

21-5 **BARGAINING UNIT LISTS.** The Employer agrees to furnish to the Union, at least twice annually, an up-to-date list of all employees in the bargaining unit, showing name, position title, and official duty station.

21-6 **POLICY.** The following are available on the internet for employee viewing during business hours:

- a. Title 5 of the United States Code;
- b. Title 5 of the Code of Federal Regulations;
- c. Rural Development Instructions;
- d. Office of Personnel Management (OPM) Qualification Standards; or
- e. OPM Classification Standards.

21-7 **MEMBERSHIP DRIVES:** Upon request and subject to normal security limitations, the Union will be permitted to conduct up to ten (10) membership drives of up to three (3) days each per calendar year. Participation in these drives, by both Union representatives and employees,

will not occur during duty time, e.g. will occur before and after work hours and during scheduled break periods and lunch periods. The Agency will provide tables and easels for the use of the Union drive if available.

ARTICLE 22 - ORIENTATION OF NEW EMPLOYEES

22-1 NOTIFICATION OF UNION REPRESENTATION. All new employees shall be informed by the Employer that the Union is the exclusive representative of employees in the bargaining unit. Each new bargaining unit employee shall receive a copy of this Agreement from the Employer, together with a list of the officers and representatives of the Union.

22-2 UNION NOTIFICATION. Within a week from the date that a new bargaining unit employee begins work, the Employer shall notify the Union of the name of the new employee and his/her position title/grade, organizational assignment, location and work email address, if known.

22-3 UNION ORIENTATION. New employees will be granted official time to attend introduction presentations by the Union. Representatives of the Union shall be allowed, on official time, to speak to each new bargaining unit employee to provide them with an introduction to this Agreement and the role of the Union. Such time will be thirty (30) minutes, during which no internal union business will occur. The Union will take steps to limit travel costs for new employee orientation sessions when practical.

ARTICLE 23 - REDUCTION IN FORCE

23-1 GENERAL. Reduction-in-force (RIF) will be conducted in accordance with law, Government-wide regulation, statute, and this Agreement.

23-2 UNION NOTIFICATION. The Employer will notify the Union of any proposed reduction in force affecting bargaining unit employees as far in advance as is practicable, but not less than fifteen (15) calendar days prior to receipt of RIF notices by bargaining unit employees. This notification will to the extent of the information available state the grade levels and the number of positions abolished, the proposed date and the reason for action. Office of Personnel Management (OPM) regulations covering RIF procedures for employees in the competitive service will be utilized by the Employer throughout the RIF process. The Employer will make RIF registers and other pertinent records available for review by the Union.

23-3 DEFINITIONS. The following definitions apply to this Article:

- a. Local Commuting Area - the geographic area that usually constitutes one area for employment purposes. It includes any population center(s) and the surrounding localities in which people live and reasonably can be expected to travel back and forth daily in their usual employment. In the event of an anticipated RIF, the Parties will meet to discuss and establish local commuting areas.
- b. Competitive Levels – groups established by the Employer, consisting of all positions in the same grade (or occupational level) and classification series which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that an Agency may reassign the incumbent of one position to any of the other positions in the competitive level without undue interruption.

23-4 EMPLOYEE NOTIFICATION. A specific RIF notice will be given to affected bargaining unit employees not less than sixty (60) calendar days prior to the effective date of the RIF and will include but not be limited to:

- a. the specific RIF action to be taken;
- b. the effective date of the action;
- c. the employee's competitive area, level, sub-group, and service date;
- d. the place where the employees and Union representatives can inspect the regulations and records that are pertinent to their case;
- e. grade and pay retention information;
- f. the employee's appeal rights, an appeal form and the address of the appropriate Merit Systems Protection Board office; and
- g. information on outplacement programs.

23-5 SHORTENED NOTICE PERIOD. When a RIF is caused by circumstances not reasonably foreseeable (e.g., natural disaster), the Agency may request approval from OPM for

a shortened employee notice period of less than sixty (60) days. This shortened period must cover at least thirty (30) full days before the effective date of release. The Union will be provided a copy of the request to OPM, which specifies:

- a. The specific RIF.
- b. The number of days by which the period will be shortened.
- c. The reasons for the request.
- d. Any other material requested by OPM.

A copy of OPM's response will be provided to the Union upon receipt by Management.

23-6 FURTHER INFORMATION. Further information on competitive levels, retention registers, and bump or retreat rights can be found by searching RIF on OPM's website.

23-7 UNION INVOLVEMENT. It is agreed that the Union will meet as frequently as necessary with the Employer to ensure compliance with the provisions of all applicable rules recognized for the purpose of providing effective placement of personnel in the RIF and ensuring re-promotion and re-employment rights. The Union will be provided one copy of the RIF rules, to include all updates provided to the Employer. Maintenance of the RIF documents provided to the Union will be the Union's responsibility. The Employer recognizes the need for RIF'd employees to be trained when they are placed in new jobs.

23-8 RE-PROMOTION: Employees who have been downgraded because of the RIF process will obtain priority re-promotion consideration to their former grades as follows:

- a. Employees selected for re-promotion to positions at their former grades and competitive levels will be promoted without competition and in accordance with applicable rules and regulations. The Union will be provided copies of these regulations.
- b. Employees will receive re-promotion consideration to positions at their former grades or to intervening grades if they are minimally qualified for the position. Re-promotion consideration will also be affected if it can be demonstrated that the employee would minimally qualify for the position within ninety (90) calendar days.
- c. Re-promotion of affected employees will occur prior to any other permanent employee being hired into the same type or grade of a position.
- d. An employee meeting the above criteria who believes he/she has not been adequately considered for re-promotion may file a grievance under the negotiated grievance procedure.

23-9 OUTPLACEMENT PROGRAMS. The Employer agrees that in a RIF, in accordance with Title 5 CFR Part 351 Section 351.803, all existing outplacement programs will be fully utilized, including utilization of USDA Special Selection Priority Programs, for affected bargaining unit employees who are being changed to a lower grade or separated.

- a. The Union and the Employer will jointly encourage each employee to see that his/her Official Personnel Folder (OPF) and application material are up to date as soon as the RIF is announced. The Employer will work with the affected bargaining unit employees in registering in existing outplacement programs and assuring that

application material and OPF's are current. At this time, outplacement eligibilities will be discussed.

- b. The Employer agrees to provide Union officials all information on the out-placement programs that are available to the affected bargaining unit members who fit into this program.
 - 1. An employee shall lose eligibility for the outplacement program if he/she refuses one valid job offer. A valid job offer is a career, career-conditional, or excepted appointment without time limit for a position having the same type of work schedule and a representative rate at least as high as the position from which the employee was, or will be, separated.
- c. The Employer agrees to provide Union officials information on how employees may update their OPF and application material.

ARTICLE 24 - DURATION AND EXTENT OF AGREEMENT

24-1 **EFFECTIVE DATE.** This Agreement shall become effective on the earlier of (a) the date it is approved by the Agency Head or (b) the 31st day from the date that the agreement was executed by the Parties unless it has been disapproved by the Agency Head pursuant to 5 USC 7114(c).

24-2 **TERM OF THIS AGREEMENT.** This Agreement shall remain in effect for three (3) years and shall renew for yearly periods on each anniversary date of the effective date thereafter, unless between one hundred and five (105) and sixty (60) calendar days prior to any such date either party gives written notice to the other of its desire to negotiate a new Agreement or amend or modify the Agreement. If such notice is given, this Agreement shall remain in full force and effect until the changes have been negotiated and approved.

24-3 **AMENDMENTS AND SUPPLEMENTS.** This Agreement may be amended and/or supplemented as follows:

- a. The negotiation of amendments and supplements will be conducted as required under the provisions of Article 6 Mid-Term Negotiations and Article 25 Official Time.
- b. Within a reasonable time after the enactment of any new law or regulation of appropriate authority which affects the provisions of this Agreement. A proposal by either party to negotiate such amendment(s) shall cite the pertinent law or regulation and the Article(s) of this Agreement affected. When such a proposal is submitted, representatives of the Employer and the Union shall meet within thirty (30) calendar days to negotiate the requested amendment(s).
- c. This Agreement may be reopened at any time by mutual agreement of the Parties.

24-4 **TERM OF AMENDMENTS AND SUPPLEMENTS.** Any agreement amending and/or supplementing this basic Agreement shall remain effective concurrent with the basic Agreement.

ARTICLE 25 - OFFICIAL TIME

25-1 PURPOSE. This Article addresses the use of official time for representational activities by Union representatives and bargaining unit employees.

It is the intent of the Parties to establish procedures to balance the Union's need for use of official time for representational activities with the Employer's interest in ensuring no unreasonable disruption in the Employer's ability to carry out its critical day-to-day operations and perform its overall mission.

25-2 DEFINITION. Official time is an employee's approved absence from duty during his/her regular hours of duty for representational matters, without charge to annual leave, compensatory time, or credit hours.

25-3 UNION REPRESENTATIVE OFFICIAL TIME. Union representatives will be granted a reasonable amount of official time activities (including investigation of, preparation for and research) related to this Agreement, mid-term negotiations, joint labor-management relations matters arising under Chapter 71, Labor-Management Relations Statute, Title 5, and any other activity for which the Civil Service Reform Act (CSRA) allows employees to use official time, including but not limited to:

1. Meetings with the Employer concerning any personnel policies, practices, or other general conditions of employment or any other matter covered by 5 USC 7114(a)(2)(A);
2. Oral and/or written replies to notices of proposed disciplinary, adverse, or unacceptable performance actions;
3. Meetings to present appeals in connection with statutory or regulatory appeal procedures in which the Union is designated as the representative;
4. Any formal discussion between one or more representatives of the Employer and one or more employees in the bargaining unit or their representatives concerning any grievance, personnel policy, practice, or other general condition of employment;
5. Any examination of an employee in the bargaining unit by a representative of the Agency in connection with an investigation if:
 - a. The employee reasonably believes that the examination may result in disciplinary action against the employee, and
 - b. The employee requests representation.
6. Presentation of grievances at related meetings and arbitration hearings, including interviewing and preparing witnesses;
7. Meetings of committees on which Union representatives have membership;
8. Conferring with employees with respect to any matters for which remedial relief may be sought pursuant to the terms of this Agreement;
9. Participation in proceedings of the Federal Labor Relations Authority, Federal Mediation and Conciliation Service, Federal Service Impasses Panel, Merit Systems Protection Board, or arbitration.
10. Reviewing and responding to memoranda, letters, notices, requests and other proposals from the Employer which affect conditions of employment;
11. Reviewing and responding to representational messages from employees and Union representatives;

12. Preparing and maintaining records and reports required of the Union by 5 USC 7120(c);
13. Communicating representational rights and information to bargaining unit employees and Union representatives;
14. Contact with elected representatives in support or opposition to pending or desired legislation that would impact working conditions for bargaining unit employees. At the written request of NFFE National, one Union representative per year will be allowed official time, to be capped at forty (40) hours, to travel outside of the State to lobby Oregon Congressional staff.

25-4 EMPLOYEE OFFICIAL TIME.

- a. An employee will be granted a reasonable amount of official time, when applicable, for attendance at the following:
 1. Meetings with Union representatives concerning representational issues;
 2. Grievance meetings;
 3. Arbitration hearings;
 4. Oral reply meetings responding to a notice of proposed adverse disciplinary, or unacceptable performance action;
 5. An adverse action hearing;
 6. Other statutory or regulatory appeal hearings;
 7. An examination by a representative of the Employer in connection with an investigation which may lead to disciplinary action.
- b. Employees will also receive reasonable amounts of official time to participate in the activities covered in Section 25-3 above.

25-5 PROHIBITED USE OF OFFICIAL TIME. Official time shall not be requested, nor permitted, for any internal Union business, including, but not limited to, the following:

- a. The solicitation of membership;
- b. The collection of dues; or
- c. The election of Union officials.

Official time is also prohibited for representational matters related to those outside of the bargaining unit.

25-6 AMOUNT OF AND APPROVAL OF OFFICIAL TIME. The Employer, normally the Union representative or employee's first level supervisor, will approve official time for the purposes set forth in Section 25-3 in amounts that are reasonably necessary to accomplish the purpose for which official time is requested. Official time will be approved except in cases of emergencies, or if it will interfere with the completion of unusual priority work assignments. Additionally, official time may not be granted if there would be a problem with office coverage.

If the official time cannot be granted for the time period in which it was requested, an alternative time will normally be offered. Time frames that are pursuant to the terms of this Agreement will be extended as necessary due to delays in approval.

25-7 PROCEDURES FOR REQUESTING AND USE OF OFFICIAL TIME. The following procedures shall be followed for requesting the use of official time for the purposes set forth in

Section 25-3.

1. All requests for the use of official time shall be recorded on the Request for Official Time Form at the end of this Article.
2. Requests for the use of official time shall be made by the Union representative or employee by completing the form at the end of this Article and submitting it to his/her immediate supervisor or the second level supervisor if the immediate supervisor is absent or unavailable.
3. The Employer's approval of the period of official time must be obtained prior to the use of such official time and recorded on the form at the end of this Article. The Employer will consider and respond to requests for official time in a timely manner. Every effort will be made to grant requests for official time.
4. In the event the Union representative or employee requires additional time due to unforeseen circumstances, he/she shall request an extension of time. The request shall be made to the approving supervisor or designee.
5. Upon the completion of approved official time, the Union representative or employee shall promptly return to work.
6. It is understood that Union representatives may receive unexpected telephone calls or other unforeseen situations which would preclude advanced approval. On such occasions, the Union representative will notify the supervisor and complete the form at the end of this Article as soon as possible after.
7. Prior to a Union representative entering a different work site, the representative must obtain the consent of the State Director or designee.

25-8 TRAVEL AND PER DIEM. The Parties agree that representational activities will be undertaken using the most efficient and effective means possible to conduct the activity, e.g., in person, by telephone, mail, email, or VTC. Depending on budgetary constraints, the Employer agrees to pay for all travel and per diem for Union officials or stewards using official time for any joint labor-management relations initiatives (e.g., bargaining, consultation meetings, formal discussions, Weingarten meetings). Government vehicles may be requested through the Vehicle Management Tool (VMT) or successor. The Union agrees to restrict travel and per diem to a reasonable amount. Union officials or stewards are permitted official time for travel required for representational activities listed above in Section 25-3 UNION REPRESENTATIVE OFFICIAL TIME.

The Union must pay travel and per diem for contacting Congressional representatives and Union sponsored labor management relations training as specified in Article 17, Labor-Management Relations Training.

**NFFE FL7 IAMAW & Rural Development Oregon
Official Time Release Form**

Employee or Representative's Name: _____ Date: _____

Employee or Representative's Signature:

Representational Function(s) Being Performed and WebTA Transaction Code:

- Labor/Management Meeting or Consultation (37) Employee/Union Meeting (35, 36, 37, or 38)
- Grievance (38) Arbitration (38)
- Formal Discussion (37) Weingarten Meeting/Investigatory Interview (37)
- Mid-Term Negotiations (36) Term Negotiations (35)
- Union-Sponsored Training (37) (separate block of official time hours per Article 18-1)
- Other Representation (Specify) _____

Estimated Start/Departure Date: _____ Time: _____

Estimated Completion/Return Date: _____ Time: _____

Location (if it is other than employee's normal workplace): _____

Actual Hours Used (if different from above): _____

Supervisors:

If, due to emergency or pressing work requirements you cannot release the employee, state the reason below. Also, indicate approximately when he/she can be released.

Released: _____ Not Released: _____

Supervisor's Signature _____

Date: _____ Time: _____

10/5/2021

INSTRUCTIONS

This form must be submitted to the employee's supervisor and approved prior to the requested official time being used. The Associate Enterprise Director will be courtesy copied on all approvals/disapprovals.

This form must be emailed to the employee's supervisor and the Associate Enterprise Director when actual hours differ from estimated hours.

Official time must be recorded in WebTA or successor using the appropriate Transaction Code (35, 36, 37 or 38, as listed in parenthesis after the activity above and explained in more detail below), and the employee's normal accounting code. The Program Entry should be *RD00 Rural Development*, and the Activity Code should be *Sup-HR 512*.

Transaction Code 35 Term Negotiations: Any bargaining unit employee spending time on the clock preparing for and negotiating a term agreement (New agreement or re-opening) including ground rules, mediation, impasse proceedings and negotiability proceedings. This includes the chief spokesperson, note taker, and members of union negotiating team. This also applies to briefings, Interest Based Bargaining, Statutory bargaining, drafting proposals or information requests relating to bargaining.

Transaction Code 36 Mid-Term Negotiations: Any bargaining unit employee spending time on the clock preparing for and negotiating a "mid-term" agreement, including ground rules, mediation, impasse proceedings and negotiability proceedings. This includes the chief spokesperson, note taker, and members of union negotiating team. This would apply to bargaining over issues raised during the life of a term agreement and includes briefings, Interest Based Bargaining, Statutory bargaining, drafting proposals or information requests relating to bargaining/change bargaining.

Transaction Code 37 General Labor-Management Relations: Any bargaining unit employee spending time on the clock representing the union, which does not fall within transaction codes 35, 36 or 38 normally will be 37. This includes but is not limited to:

- Labor Management Forum meetings and working groups
- Working groups when acting for the union
- Formal Discussions
- Investigatory/Weingarten meetings
- Union sponsored training / events
- Joint training
- Consultation meetings
- Briefings

Transaction Code 38 Dispute Resolution: Any bargaining unit employee spending time on the clock representing the union in grievances or arbitrations, adverse action meetings, ADR meetings, EEO functions if designated by the union, and ULP proceedings. Bargaining unit employees attending grievance meetings or representing themselves should also be using this code.

ARTICLE 26 – TELEWORK PROGRAM

26-1 DEFINITIONS.

- a. **Alternative Work Site.** A work location, other than the official worksite, that satisfies all requisite Federal health and safety laws, rules, and regulations pertaining to the workplace, where an employee performs his/her official duties. Supervisors may authorize telework from several alternate worksites. Temporary authorizations or changes in the location of designated alternative worksites do not require a new AD-3018, USDA Telework Agreement though must be communicated to the supervisor.
- b. **Official Duty Station.** The official duty station is the management-approved location where employees regularly perform their official duties. If an employee physically reports to the official worksite at least twice in a bi-weekly pay period, that worksite will be designated as the employee's official duty station.
 1. A teleworker's official duty station will remain unchanged as long as he/she reports to the assigned, traditional office at least two (2) days each biweekly pay period.
 2. Approvals for short term, full-time telework arrangements for medical or other personal reasons do not require a change of official duty station. In these situations, the employee must be expected to return to the worksite at some point in the future on a regular and recurring basis. It is the responsibility of the employee's immediate supervisor to decide when it no longer is proper to apply the temporary exception.
- c. **Telework.** A work arrangement in which an employee performs and completes official duties and responsibilities from an alternative worksite. Telework may be authorized for an entire duty day or a portion of one. Telework does not include the following:
 1. Work performed while on official travel status;
 2. Work performed while commuting to or from work;
 3. Remote work; or
 4. Mobile work.
- d. **Telework Agreement (AD-3018).** The written agreement that records the terms and conditions of the telework arrangement, as approved by the supervisor.
- e. **Unscheduled Telework.** Telework that is authorized in response to specific duty status announcements issued by the Office of Personnel Management or other authorized Agency officials for use during periods of inclement weather, a pandemic or public health crisis, or other emergency situations, or with prior supervisory approval, telework used to maintain productivity during short-term disruptions to normal operating procedures.

26-2 ELIGIBILITY.

- a. All positions are presumed eligible for telework with the exceptions listed below.
- b. Positions may be identified as ineligible for telework when position duties require daily physical presence and do not include any portable or administrative work that can be accomplished from an alternative office or location.
- c. Employees may be identified as ineligible for telework, based on the following criteria:
 1. Performance. An employee is ineligible for telework if he/she has received a less than fully successful performance rating within the past twelve (12) months. The employee may remain ineligible for up to twelve (12) months from the date of the documented performance rating or start of the opportunity to demonstrate acceptable performance, at the discretion of the employee's supervisor.
 2. Conduct. An employee is ineligible for telework due to conduct issues resulting in official, formal disciplinary action, as filed in the employee's Official Personnel Folder (OPF) as a matter of personnel record and may remain ineligible for up to twelve (12) months from the date that the discipline was effectuated.
 3. Permanent Ineligibility. As specified in the Telework Enhancement Act, an employee is permanently ineligible for telework if they have been formally disciplined for the following:
 - i. Absence Without Leave (AWOL) for 5 or more days in any calendar year; or
 - ii. Violation of 5 CFR 2635, Subpart G, Misuse of Position, of the Standards for Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing their official duties.
- d. Telework may be limited for new employees while being trained.

26-3 PARTICIPATION. Participation in the program requires an approved Telework Agreement. An agreement may be modified, suspended or terminated by the employee or by the supervisor at any time with appropriate notice.

26-4 UNSCHEDULED AND EMERGENCY TELEWORK.

1. OPM or USDA authorized officials may announce emergency operating status guidance allowing for unscheduled or required telework beyond that outlined in the OPM early dismissal guidance for weather events.
2. The Employer may order employees to evacuate from their worksite and perform work from their home, or an alternative location, during inclement weather, public health crisis, or other emergency without regard to whether the employee has a

Telework Agreement in place at the time the order to evacuate is issued.

3. Employees with a Telework Agreement are expected to telework or take other authorized leave (paid or unpaid), paid time off or a combination of both, as approved by the Employer.
4. Teleworkers generally are ineligible for weather and safety leave when a closure is announced, except in rare circumstances:
 - i. Weather and safety leave may be granted to a telework-ready employee who, in the Employer's judgment, could not have reasonably anticipated the severe weather or other emergency condition so did not take home needed equipment or work.
 - ii. Weather and safety leave may be granted to a telework-ready employee who is prevented from safely working at the alternate site because of the severe weather or other emergency event (e.g., electrical power or broadband outage, fire, flooding or heating and cooling failures). In this case, the home or other approved telework site is also affected in such a way that work cannot be safely performed. Employees must communicate with their supervisors as soon as possible when such work disruptions occur.
 - iii. Teleworkers who are working in the office when an early departure is announced generally may receive weather and safety leave for time required to commute home, excluding the period for an unpaid lunch break. This means that telework participants must complete the remaining hours of their workday, if any, either by teleworking or taking leave, (paid or unpaid) or other paid time off once they arrive home.

26-5 GRIEVABILITY. The determination of eligibility or the telework application process may be grieved in accordance with Article 8, Grievance Procedure.

26-6 DUTY HOURS FOR TELEWORKING EMPLOYEES. The Employer will give appropriate weight to employee personal hardships related to duty hours and work schedules upon request.

Duty hours and work schedules while teleworking will be consistent with RD Instruction 2051-F, Subpart F, Hours of Duty, and Article 19, Workweek/Schedules.

26-7 EQUIPMENT. Government owned computers will be provided to employees participating in the telework program. All computer equipment use must comply with Agency policies and this Agreement. The Employer is responsible for the maintenance, repair and replacement of Government-owned equipment.

Teleworking employees will be provided with a work laptop, access to a VPN connection, one headset, and Cisco Jabber or alternative.

26-8 WORKERS COMPENSATION AND OTHER LIABILITIES. Employees are covered by the Federal Employees Compensation Act at the alternative worksite as long as the injury occurred while performing their official duties and in the designated work area identified on the Telework Agreement. If an injury occurs, the employee must notify the supervisor immediately,

provide details of the accident or injury, and complete Department of Labor Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay Compensation.

The Government is not liable for damages to the employees' personal or real property while the employee is teleworking, except to the extent the government is held liable by the Federal Tort Claims Act or the Military and Civilian Employee's Claims Act.

26-9 DEPENDENT CARE. Telework is not a substitute for dependent care. Dependents may be permitted in the home provided they do not require constant supervision or care (i.e., older children or adolescents) and their presence does not disrupt the ability to telework effectively.

ARTICLE 27- DUES WITHHOLDING

27-1 GENERAL. Bargaining unit employees may make a voluntary allotment for the payment of dues to the Union.

In implementing the dues withholding program, the Employer and Union will be governed by the provisions of 5 USC 7115 and this Article.

27-2 DUES WITHHOLDING. In order to initiate dues withholding, an employee must complete and sign a Standard Form (SF)-1187, Request for Payroll Deductions for Labor Organization Dues, and submit it to the Union. The Union will certify that the employee is a member in good standing and submit the completed SF-1187 to Employee Services Division (ESD), through the HR Service Request ticketing tool or successor. One standard amount for all employees or different amounts of dues for different employees may be specified. Dues deductions will become effective within three (3) pay periods of Agency receipt.

Dues deductions will be made electronically each pay period by the Employer and remittances will be made promptly each pay period to a single account provided by the Union.

27-3 DUES WITHHOLDING LIST. The Employer shall promptly forward to the National Union a listing of dues withheld via electronic means each pay period. The listing shall show the name of each member employee from whose pay dues was withheld, the amount withheld, the Agency code, and the number of the Local (7). The list will also include the name of each employee member who previously made an allotment for whom no deduction was made that pay period, whether due to leave without pay or other cause. Such employees shall be designated with an appropriate explanatory term.

27-4 CHANGE IN AMOUNT OF DUES. When the amount of regular dues changes, the Union Treasurer will notify ESD of that change in writing. ESD will acknowledge and forward by email to Payroll for inclusion in future allotments and the Union will be copied. This will take effect within four (4) pay periods of notification to Payroll. Only one such change may be made in any six-month period.

27-5 TERMINATION OF DUES WITHHOLDING. The Employer will terminate an allotment of Union dues withholding:

- a. as of the beginning of the first full pay period following receipt of notice that exclusive recognition has been withdrawn;
- b. at the end of the pay period during which an employee member is separated from the Agency or transferred to a position not included in a NFFE-IAM RD bargaining unit. ESD and the employee have a mutual responsibility to assure timely revocation of the dues withholding;
 1. When an employee member transfers to another NFFE-IAM bargaining unit within the Agency, he/she may transfer his/her membership to the other bargaining unit by submitting an HR SharePoint or successor ticket. The Union may also have the membership transferred by contacting the

employee's supervisor.

- c. at the end of the pay period during which ESD receives a notice from the Union that an employee member has ceased to be a member in good standing; or
- d. in accordance with Section 27-7 PROCEDURE TO CEASE DEDUCTIONS.

27-6 CORRECTION OF ERRORS. The Employer agrees that an error in the amount of dues withheld from employees shall be corrected as soon as practicable after the Employer has discovered the error or has received written notification from the Union of the error. The Union has the right to grieve violations of this Article in accordance with Article 7, Grievance Procedure. The Parties agree that the employee will be held harmless for any errors prior to correction of the error.

If an employee has been improperly separated and is ordered reinstated by the appropriate authority to a bargaining unit position, the employee is required to initiate a new SF-1187 to restart dues withholding if he/she voluntarily elects to do so.

27-7 PROCEDURE TO CEASE DEDUCTIONS.

- a. WITHIN THE FIRST YEAR: An SF-1188, Cancellation of Payroll Deductions for Labor Organization Dues, may be filed by an employee with ESD prior to the anniversary date of his/her first dues withholding. It is the employee's responsibility to ensure timely filing of the revocation forms. A revocation received by ESD during the course of the employee's first year of dues allotment will become effective no later than the second pay period after the first anniversary of the pay period the Union dues deductions began. ESD shall notify the Union National Office at newmember@nffe.org of all revocations and provide a copy of the SF-1188 at the time the revocation is made effective.
- b. AFTER THE FIRST YEAR: Any subsequent voluntary revocation after the first year of Union dues deductions will be processed as soon as administratively feasible. ESD shall notify the Union National Office at newmember@nffe.org of all revocations and provide a copy of the SF-1188 at the time the revocation is made effective.
- c. Only ESD can send a SF-1188 to Payroll to affect this action. Payroll will be advised that it cannot take any dues revocation action without concurrence from ESD.

ARTICLE 28 – HEALTH AND SAFETY

28-1 GOALS. Safeguarding the lives and physical safety of employees is an important responsibility of the Employer. Management will take reasonable steps to ensure employee safety from both internal and external threats, in the office and in the field. The Agency will provide and maintain conditions and places of employment that are free from recognized hazards and unhealthful working conditions, consistent with law, rule and regulation, specifically applicable requirements of:

- a. 29 USC 668 et seq. (the Occupational Safety and Health Act of 1970);
- b. Executive Order 12196 Occupational Safety and Health Programs for Federal Employees;
- c. 29 CFR 1960 Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters; and
- d. applicable requirements of 29 CFR 1910 Occupational Safety and Health Standards.

28-2 ROLES AND RESPONSIBILITIES.

- a. The Employer will notify the Union of the management official designated to address safety and health concerns. The Union may request periodic consultations with that management official to discuss general matters of safety and health. At those meetings or at any other time, the Union may make safety and health recommendations.
- b. Local safety and health roles and responsibilities will be disseminated to all employees.

28-3 UNSAFE CONDITIONS.

- a. Employees must report safety hazards promptly to their immediate supervisor. The Employer will initiate prompt appropriate action to correct unsafe conditions whenever they are found to exist. There will be no reprisal directed against any employee for exercising their right to report an unsafe condition or to request or participate in an inspection of an unsafe condition.

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

- b. Upon request, the Employer agrees to provide the Union with the annual OSHA Form 300, Log of Work-Related Injuries and Illnesses, or successor.

28-4 SAFETY INSPECTIONS. A Union representative has the right to participate in annual safety inspections and any other safety inspection being conducted in the work unit on official time. The Union will be notified of safety inspections and a Union representative may accompany the inspector or inspecting team on the inspection. The Union will be provided with copies of all inspection reports.

28-5 ERGONOMIC SUPPORT. The Employer agrees to work with the USDA Target Center and the Union as appropriate to address ergonomic issues involving equipment, workstation assessments and equipment demonstrations or training. In addition, employees with medical conditions are encouraged to utilize the Reasonable Accommodation process.

28-6 DRINKING WATER. Potable water shall be accessible to employees at Government facilities. Potable water means water that meets the standards for drinking purposes of the State or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Drinking Water Regulations. Alternative arrangements, which may include unscheduled telework, early dismissal, etc., for access to potable water will be made when there is an interruption to the water supply.

28-7 EMPLOYEE RIGHTS. Employees have the right to:

- a. copies of the Agency's safety standards and injury and illness log (OSHA Form 300 or successor); and
- b. report and request inspections of workplaces which the employee believes to be unsafe or unhealthful, without fear of coercion or reprisal.

28-8 COMPUTER USE. Employees are not expected to work continuously at their computer for excessive periods of time. Employees are encouraged to briefly interrupt their work (for example, by standing, stretching, etc.) periodically before resuming work. Approved breaks and meal periods may also be used to interrupt the work periods.

28-9 ONGOING THREATS. The Employer will make reasonable efforts to monitor and advise employees of warnings received related to any ongoing threats to the safety and security of employees during working hours (including instances of poor weather and civil unrest) and make reasonable effort to keep employees informed of the situation as it changes. Office closures and/or early dismissals will be conducted in accordance with Government-wide regulation, Agency regulation and this Agreement and will take employee safety into consideration.

28-10 JOB-RELATED INJURY/ILLNESS. In the case of job-related injury/illness, the Employer will supply employees with appropriate job-related injury or illness claim forms and if requested, assist employees with the completion of the forms. The Employer will inform employees of their rights under the Federal Employee's Compensation Act. The Employer and employee will work together to ensure prompt submission of claims to the appropriate parties for proper handling and disposition.

28-11 FIRST AID/CPR. Each office will have a first aid kit in an accessible location. Depending on budgetary constraints, training in the use of automatic external defibrillators (AEDs) and cardiopulmonary resuscitation (CPR) will be made available to employees located in offices containing AEDs. AED/CPR training will normally occur on duty time.

28-12 NOTIFICATION TO THE UNION. The Employer will notify the Union of any known credible threats to the security of the employees.

28-13 OCCUPANT EMERGENCY PLAN. Employees will be provided with wallet sized cards listing emergency contact information. The Employer and the Union will develop an updated

Occupant Emergency Plan (OEP) for each office. Once implemented, employees will be briefed on the procedures within the OEP.

28-14 MEDICAL CONDITIONS. Employees with qualifying disabilities may utilize the Reasonable Accommodation (RA) process as outlined in Departmental Regulation 4300-008 Reasonable Accommodations and Personal Assistance Services for Employees and Applicants with Disabilities or successor for assistance with work accommodations. If an accommodation has been requested and involves safety issues, the supervisor will implement interim measures to accommodate the employee until the RA request is approved or denied.

28-15 PANDEMICS/EPIDEMICS. During periods when a pandemic or epidemic event exists as declared by the State or Federal Government:

1. The Employer will follow all Government-wide laws, rules, regulations and Executive Orders as well as Agency regulations and Center for Disease Control (CDC) guidance regarding:
 - i. social distancing,
 - ii. air systems,
 - iii. cleaning supplies, and
 - iv. telework
2. The Employer will make available practicable tools which facilitate social distancing measures to include teleconferencing, phones, and emails.
3. Increased telework, flexible work schedules and liberal leave usage are available for employees with work-life balance needs.
4. The Employer will issue personal protective equipment (PPE) (e.g., masks, gloves, hand sanitizer, disinfecting supplies) consistent with applicable CDC and Occupational Safety and Health Administration (OSHA) requirements to the extent PPE is available.
5. The Employer will encourage the use of proper hand washing techniques and other best health practices in order to reduce the spread of disease.
6. COVID-19 testing will be provided at no cost to the employee when tests are required.
7. Employees and the Union will be notified of possible exposure to a confirmed positive pandemic illness. The notification will include the date the positive employee was last in the facility along with known impacted areas within the facility.
8. Procedures for implementing changes subject to bargaining under 5 USC Chapter 71 related to employee schedule changes will be conducted in accordance with Article 6 Mid-Term Negotiations of this Agreement.

ARTICLE 29 PERFORMANCE MANAGEMENT

29-1 GENERAL. Performance management is the systematic process by which an agency involves its employees, as individuals and members of a bargaining unit, in improving organizational effectiveness in the accomplishment of agency mission and goals.

29-2 POLICY. The Agency will administer the performance appraisal system in accordance with 5 USC Chapter 43 and 5 CFR 430.

29-3 PERFORMANCE STANDARDS.

- a. The performance appraisal system will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria. Application of all performance standards shall be fair and equitable.
- b. Performance standards will, to the extent feasible, permit the evaluation of an employee's performance based on measures that are observable, measurable and/or demonstrable.
- c. The standards and elements will be consistent with the duties and responsibilities covered in each bargaining unit employee's position description.
- d. Employees will be provided a reasonable amount of time to achieve their performance standards.
- e. Absences for and the conduct of representational activities on official time will not reflect adversely on the performance appraisals of any Union representative. Performance appraisal of such employees will only be measured during periods when employees are assigned to those duties.
- f. When an employee has documented information technology issues that are beyond his/her control, they will be taken into consideration when evaluating performance.

29-4 PERFORMANCE PLAN COMMUNICATION.

- a. Normally within the first thirty (30) calendar days of every rating period or within thirty (30) calendar days of employment or reassignment, the supervisor will issue and discuss the performance plan and how their performance will be measured with each employee. Elements and standards in the prior years' plan remain in effect during a grace period while a new plan is being finalized. The supervisor will provide to the employee the draft performance plan before it takes effect, which contains the critical elements and performance standards.
- b. Employees will be afforded the opportunity to provide input on their performance standards, including the methods used to measure the quality and quantity of work being done. The supervisor will give the employee the final performance plan and ask the employee to sign and date to acknowledge receipt. An employee's signature does not mean that the employee agrees or disagrees with the contents of the plan.

- c. If after communication with his/her supervisor, an employee still disagrees with provision(s) within his/her performance plan, he/she may request a review by the reviewing official within fourteen (14) calendar days of receipt of the performance plan. The decision of the reviewing official will be final.
- d. If there are changes to employees' critical elements or performance standards during the rating period, the supervisor will discuss with and notify the employee of the changes, annotate them in the performance plan, and provide a copy of the revised performance plan to the employee. If changes are made during the appraisal cycle the changes shall only be applied prospectively.
- e. The Employer will provide advance notice to the Union of proposed changes to critical elements or performance standards as required by 5 USC Chapter 71 and in accordance with Article 6 Mid-Term Negotiations of this Agreement.
- f. If at any time during the rating period, an employee or the Union believes an established performance standard is unattainable, they may raise the concern along with any supporting reasoning with the supervisor. If not resolved by the supervisor, the employee or the Union may elevate the concern and any supporting reasoning to the State Director or designee for inquiry. If the State Director or designee finds that the performance standard is unattainable, the standard will be modified.

29-5 INTERIM PERFORMANCE DISCUSSIONS.

- a. The supervisor and employee will discuss the employee's job performance in private surroundings at least quarterly during the rating period. A productive discussion on performance should include employee input. An employee may choose to not make any comments or dispute any assertions about his/her performance during the performance discussions without waiving the right to grieve his/her annual appraisal.
- b. If the supervisor has identified shortcomings in the employee's performance, the employee shall be notified when the problem is perceived, as well as during the quarterly discussions. The supervisor will suggest ways for the employee to improve his/her work performance.

29-6 ANNUAL APPRAISAL.

- a. Employees shall receive an objective annual performance rating and receive a written copy of their evaluation within thirty (30) calendar days after the end of the appraisal period.
- b. Employees will be asked to sign their appraisal acknowledging receipt. Employee signature does not mean agreement or disagreement with the plan or the rating.
- c. Training duties will be given appropriate consideration in performance appraisals.
- d. Employees must be working under a performance plan for a minimum of ninety (90) days before a rating can be given.
- e. Rating officials will consider any performance documentation supplied by the employee in determining his/her annual appraisal.

29-7 GRIEVABILITY. Employee performance appraisals may be grieved in accordance with Article 7, Grievance Procedure.

29-8 NOTICE OF PERFORMANCE CONCERNS

- a. The Employer will identify and document potential issues with any employee meeting his/her performance expectations and address the issues with the employee before performance falls below the standards defined at the fully successful level for any element as it is defined in the employee's performance plan. An employee may object to his/her supervisors' determination of shortcomings at the time that it is presented to him/her, and it does not waive the employee's right to file a grievance on his/her annual performance appraisal.
- b. At any time during the performance appraisal cycle that an employee's performance is determined to be unacceptable in one or more critical elements, the Employer will notify the employee of the critical element(s) for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance in his/her position. For each critical element in which the employee's performance is unacceptable, the Employer shall afford the employee a reasonable opportunity to demonstrate acceptable performance, commensurate with the duties and responsibilities of the employee's position. The supervisor will regularly take steps to assist the employee in improving his/her performance.
- c. Further information regarding procedures for addressing unacceptable performance is located in Article 14 Actions Based on Unacceptable Performance.

29-9 WITHIN GRADE INCREASE (WGI). A decision on whether or not to grant a within grade increase will be based on the most recent rating of record. To be eligible for a WGI, the rating of record must be at least fully successful.

If the supervisor's decision is to deny a WGI and that decision is contrary to the most recent rating of record, the supervisor must issue an out of cycle rating of record in full compliance with all performance rating regulations. If the employee is denied the WGI, he/she will receive written notice to that effect containing his/her right to request reconsideration. If the reconsideration is denied, the employee will receive a written response with any grievance/appeal rights.

29-10 EMPLOYEE PRODUCTION STUDIES. The Employer will inform the Union in advance of any studies or test periods used to assess and evaluate employee production. The Employer will provide the Union with the data/results of the study.