



**Agreement between
USDA Forest Service
Nebraska National Forest and
Grasslands/Pine Ridge Civilian
Conservation Center
and
American Federation of
Government Employees
(AFGE) Local 3363**



PREAMBLE

Pursuant to policy set forth in Chapter 71, Title 5, U.S. Code and subject to all existing or future applicable statutes and regulations issued by the Office of Personnel Management (OPM), the Department of Labor, the Department of Agriculture and the Forest Service, and to agreements and amendments that may be negotiated at a later date, the following articles constitute an agreement made in good faith, by and between the Nebraska National Forest and Grasslands/Pine Ridge Civilian Conservation Center Nebraska National Forest and Grasslands/Pine Ridge Civilian Conservation Center, hereinafter referred to as "Management", and Local 3363, American Federation of Government Employees, AFL-CIO, hereinafter referred to as the "Union". Management and the Union recognize that they have a mutual and cooperative interest in the effective accomplishment of the assigned responsibilities of the Nebraska National Forest and Grasslands/Pine Ridge Civilian Conservation Center Nebraska National Forest and Grasslands/Pine Ridge Civilian Conservation Center and that this mutual interest will be furthered by the establishment, and maintenance of labor-management cooperation pursuant to Chapter 71, Title 5, U.S. Code.

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ARTICLE 1

Recognition

Section 1. Management recognizes the Union as the exclusive representative of all bargaining unit Employees in the unit as defined in Section 2 below, and the Union recognizes the rights and obligations of Management to manage the Forest. The Union agrees to represent all bargaining unit employees in the unit in a fair and equitable manner with respect to grievances, bargaining, personnel policies, practices, and working conditions without regard to Union membership, race, color, religion, sex, age, national origin, political affiliation, marital status, or disability.

Section 2. Management hereby recognizes that the Union is the Exclusive Representative of all eligible employees in the certified units, as follows: National Forest and Grasslands (Unit A) and Pine Ridge Civilian Conservation Center (Unit B).

Unit A: All nonprofessional employees employed by the Nebraska National Forest at Wall, South Dakota; Hot Springs, South Dakota; Halsey, Nebraska; and Chadron, Nebraska.

EXCLUDING all Job Corps employees services by the Forest Service at Chadron, Nebraska, professional employees, all management officials, supervisors, and employees described in Chapter 71, Title 5, U.S. Code.

Unit B: All employees of the Pine Ridge Civilian Conservation Center including professional employees.

EXCLUDED are all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors as defined in Executive Order 11491, as amended.

ARTICLE 2

Definitions and General Provisions

Section 1. The following listed or referenced definitions of terms or words are agreed upon to assist in the clarification of the interpretation, application, and administration of the terms of this agreement.

Section 2. The definition of terms or words in 5 U.S.C. Chapter 71, will apply to this agreement. Interpretation of terms or words will be governed in the same manner that the provisions of Chapter 71 of Title 5, U.S.C. are required to be interpreted under 5 U.S.C. 7101; in a manner consistent with the requirement of an effective and efficient Government.

Section 3. References to Employees (capitalized) or unit employees will refer only to Employees included in the exclusive representation unit. References to employees (lowercase) or Department employees will take the meaning of employees as generally defined in 5 U.S.C. 7103.

Section 4. References to work supervisor or supervisor will refer to the immediate supervisor of an Employee or the supervisor's designated acting.

Section 5. References to Union Representative will refer to an official of the Union, or any other person specifically designated by the Union to represent the Union in dealings with Management, whether or not the official or representative so designated is employed by the Federal Government.

Section 6. References to laws and government-wide regulations refer to the most current applicable regulations or statute existing at the time the agency is exercising one of its management rights.

ARTICLE 3

Purposes Served by this Agreement

Section 1. 5 USC 701 (a) (1) (Whereas) experience in both private and public employment indicates that the statutory protection of the employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them--

- A. safeguards the public interest,
- B. contributes to the effective conduct of public business, and
- C. facilitates and encourages the amicable settlements of disputes between employees and the Employer involving conditions of employment; and
- D. Whereas the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the government. Therefore, labor organizations and collective bargaining in the Civil Service are in the public interest.

Section 2. The Employer recognizes the right of employees to organize and express their views collectively, that participation of Union representatives when personnel policies change in the negotiation and implementation of personnel policies, practices or working conditions affecting them contributes to the effective conduct of the unit that the effective administration of the unit and the well-being of its employees require that orderly and constructive relationships be maintained between the Union and management officials, and that effective labor management cooperation requires a clear statement of the respective rights and obligations of the Union and the Employer.

Section 3. This agreement defines certain roles and responsibilities of the parties hereto; states policies, procedures, and methods that govern working relationships between the parties, and identifies subject matter of proper mutual concern to the parties who have entered into agreement primarily for the following reasons:

- a. to improve the efficient administration and management by means of obtaining the active interest, support, and cooperation of employees in determining and maintaining general working conditions that are satisfactory to them and that contribute to the efficiency of the Federal service to the public. This includes the following objectives:
 1. to promote fair and reasonable working conditions;
 2. to promote improved programs designed to aid employees in achieving their acknowledged and recognized job-related objectives;
 3. to promote the highest degree of morale in the employee.
- b. to establish a basic understanding relative to matters affecting conditions of employment under this agreement;
- c. to facilitate the adjustment of grievances and disputes in carrying out the intent in U.S. Code, Section 7121.
- d. to promote effective employee/management relations between the employer and Employees; and
- e. to provide a safe and healthful work environment.

ARTICLE 4

Rights and Obligations of Management

Section 1. 5 USC 7106. Nothing in this agreement shall affect the authority of Management-

- A. to determine the mission, budget, organization, number of Employees, and internal security practices; and
- B. in accordance with applicable laws-
 1. to hire, assign, direct, layoff, and retain Employees, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such Employees;
 2. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which operations shall be conducted.
 3. with respect to filling positions, to make selections for appointments from-
 - a. among properly ranked and certified candidates for promotion; or
 - b. any other appropriate source; and
- C. to take whatever actions may be necessary to carry out the mission during emergencies.

Section 2. Nothing in this agreement shall preclude Management and the Union from negotiating 5 USC 7106 (b)--

- a. at the election of the Agency, on the numbers, types and grades of Employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods and means of performing work;
- b. procedures which Management will observe in exercising any authority under this section; or
- c. appropriate arrangements for Employees adversely affected by the exercise of any authority under this section by such Management officials.

Section 3. To the extent that Management policies are in conflict with this agreement, the provisions of the agreement will govern, except for Management policies for which there is a compelling need.

Section 4. Management will observe all rules of conduct established by law, Department Regulation, Agency and Forest Policy.

ARTICLE 5

Rights and Obligations of Employees

Section 1. 5 USC.71, each Employee will have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each Employee will be protected in the exercise of such right. Except as otherwise provided under this Agreement such right includes the right-

- A. to act for the Union in the capacity of representative and the right, in that capacity, to present the views of the Union to Management and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and
- B. to engage in collective bargaining with respect to conditions of employment through representatives chosen by Employees under Chapter 71, U.S. Code, Title 5.

Section 2. It is further agreed that the rights described in Section 1 preceding do not extend to participation in the Management of labor organization or to acting as a representative of any such organization where such participation or activity would result in a conflict of interest or otherwise be incompatible with law or with the official duties of an Employee.

Section 3. Employees have the right to bring matters of personal concern to the attention of the appropriate Union or Management official in accordance with applicable laws, rules, regulations and established policies, and to choose their own representative in a grievance or appeal action which is consistent with law and regulations. Under certain circumstances,

Agencies can oppose an employee's choice of representative such as when the choice presents a conflict of interest.

Section 4. The Union and Management agree that all provisions of this Agreement and of applicable laws, Chapter 71, Title 5, U.S. Code, as amended, and regulations will be applied fairly and equitably to all Employees in the unit.

Section 5. 5 USC 71, nothing in the Agreement will require employees to become or remain a member of the Union, or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.

Section 6. It is agreed that Employees will have access to their official personnel folders (OPF) in accordance with existing regulations. No material of any nature, which might reflect adversely upon an Employee's character or career, will be placed in the employee's OPF without the Employee's knowledge.

ARTICLE 6

Rights and Obligation of the Union

Section 1. 5 USC 7714, the Union, which has been accorded exclusive recognition, is the exclusive representative of the Employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering all Employees in the unit. An exclusive representative is responsible for representing the interests of all Employees in the unit it represents without discrimination and without regard to labor organization membership. The Employee, will be given the opportunity to be represented at-

- A. **Formal Discussion:** Any formal discussion between one or more representatives of Management and one or more Employees in the unit or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment.
 1. All of the following factors must be present in order for there to be a formal discussion:
 - a. *Attendance*
At least one Management representative and one employee covered by the collective bargaining contract.
 - b. *Discussion Topic*
Conditions of employment (heating, smoking areas, desk location, parking, etc.) Grievances or appeals.
 - c. *Formality*
Scheduled. Agenda. Notes/Minutes. Required.
 2. Roles and Requirements:
 - a. *Management*

Notify union representative. Provide opportunity to attend.

b. Union

Attend as representative, if they desire. Relevant questions and comments.

B. Weingarten Rights: Any examination of an Employee in the unit by a representative of Management in connection with an investigation if;

1. the Employee reasonably believes that the examination may result in disciplinary action against the Employee; and
2. the Employee requests representation.
3. Weingarten Rights will be posted on all common bulletin boards at Nebraska National Forest and Grasslands/Pine Ridge Civilian Conservation Center.

Section 2. The right to be present during formal discussions between Management officials and Employees does not extend to informal discussions.

Section 3. The Union agrees to assist Management in efforts to improve safety practices, combat tardiness and absenteeism, encourage energy conservation, develop effective work relationships, promote understanding of personnel policies, practices, conditions of employment and provisions of this agreement, and to encourage the submission of suggestions and cost reduction ideas.

Section 4. It is agreed that internal business of the Union such as soliciting membership, collecting dues, electing officers, meetings, conferences, and distribution of literature will be conducted during the non-duty hours of the employees involved.

Section 5. The Union has the right to represent an Employee at appeal and grievance proceedings if so requested by the Employee, however, an Employee may restrict union attendance at informal EEOC proceedings and reasonable accommodations discussions. It is agreed that the Union will be provided the opportunity to be present at the adjustment of a grievance of an Employee even though the Employee may not have chosen a representative of the Union.

Section 6. Management will recognize duly elected officials and Union representatives appointed by the Union, and those individuals designated, in writing, by the Union to be Union representatives. The Union will provide Management with a listing of representatives by name on a quarterly basis or as needed.

Section 7. Reports, recommendations, reviews, assessments, evaluations and costs incurred from Management therefrom regarding all grievances and complaints involving the Employees will be given to the President of the Union or his/her designee upon request, subject to the availability of data and in accordance with the Privacy Act and/or FOIA, current case law, and information request requirements (5 USC 7114 (b) (4)).

Section 8. Management recognizes the right of the Union to file alleged unfair labor practice (ULP) charges when the Union believes Management has taken an action that violates the provisions of 5 USC 7116 (a). Prior to a ULP being filed, the filing party will file a Notice of Intent to file a ULP. The charged party will have 15 calendar days to respond.

ARTICLE 7

Negotiations

Section 1. It is agreed and understood that matters appropriate for negotiation between the parties are policies, practices, and procedures and matters affecting conditions of employment that are more than de minimis as required by Chapter 71, Title 5, U.S. Code and case law. The Employer shall give due regard to the obligations imposed by applicable laws, rules, regulations, and this Agreement.

However, the obligation to meet and negotiate does not include matters excluded by provisions of Article 4 and law as required by Chapter 71, Title 5, U.S. Code. This does not preclude the parties from negotiating agreements on the procedures and impact of implementing substantive changes required by law or regulation issued at a higher level.

Section 2. Prior to publishing any new or revised policy effecting substantive conditions of employment in the unit, Management shall provide to the Union's President written notice of the proposed change(s) of the bargaining unit employee's conditions of employment (that are not otherwise covered by the parties' agreement). A period of fourteen (14) calendar days from date of receipt to advise the Employer, in writing of the Union's request to negotiate and provide the Employer written proposals.

Section 3. After receipt of the Union's proposals, the Employer and the Union will bargain, as appropriate and in accordance with applicable law, rule and regulation. If the Union's proposals are not provided to the Employer within fourteen (14) calendar days as stated above, then the request to negotiate will be deemed waived and closed, and the Employer may proceed with implementation, unless an extension is requested and approved in advance.

Section 4. Negotiations will take place as soon as practical, but no more than fourteen (14) calendar days after the Union has provided proposals, unless the parties mutually agree to extend the period. The Parties will strive to reach agreement and conclude bargaining within fourteen (14) calendar days from the start of negotiations. The bargaining period may be extended by mutual agreement of the Parties.

Section 5. Should the Parties not come to an agreement within fourteen (14) calendar days, the Employer may implement the change in its discretion. However, post-implementation bargaining procedures pursuant to Section 6 of this article will apply if the Parties are unable to reach agreement prior to the implementation date declared by the Employer.

Section 6. Post-Implementation Bargaining Procedure

- A. Definition. Post-implementation bargaining is bargaining after a management-initiated change has been implemented. When the Employer determines that a particular change is necessary or appropriate, in accordance with law, rule or regulation, and must be implemented by a certain date, post-implementation procedures will apply if the parties are unable to reach agreement prior to the implementation date of the change.
- B. Post Implementation Bargaining Procedure. The Union will be provided notice of change following the implementation date by the Employer and afforded the opportunity to bargain. The Union will have fourteen (14) calendar days to submit their demand to bargain accompanied by their bargaining proposals related to the implemented change. The Union will be afforded the opportunity to submit bargaining proposals concerning the change for up to fourteen (14) calendar days following the date that implementation by the Employer has occurred. The Union shall not file unfair labor practice charges solely over the Employer implemented change. However, the Union reserves all other rights pursuant to applicable laws and regulations. Once Union proposals have been submitted to the Employer, the procedures above will apply.

Section 7. Agency Head Review. All negotiated agreements shall be subject to review by the head of the Agency, or designee pursuant to 5 U.S.C §7114 (c).

ARTICLE 8

Impasses in Negotiations

Section 1. When the Union and Management determine that an impasse has been reached on an item in negotiation, the item will be set aside. After all negotiable items on which agreement can be reached have been disposed of, the parties will once more attempt to resolve any existing impasse items.

Section 2. If the Union or Management concludes that an impasse has been reached on an issue, either party may request mediation from the Federal Mediation and Conciliation Service (FMCS) by stating its position in writing, together with a notice of intent to request mediation. Within fourteen (14) calendar days after receipt of the notice the other party may submit, in the interest of compromise, a counter proposal. Failure to submit a counter proposal within these fourteen (14) calendar days will constitute agreement to proceed with mediation.

Section 3. If, after discussion between the parties of the counter proposal submitted in accordance with Section 2 above, either party concludes that the impasse still exists, it will notify the other party in writing and request mediation as indicated in Section 4 below.

Section 4. Within fourteen (14) calendar days after either or both parties conclude that the impasse still exists, either or both parties will request FMCS to provide mediation service in accordance with the procedures set forth in the regulations of the service.

Section 5. The above does not preclude either party from presenting, in the interest of reaching an agreement, a substantive counter proposal at any stage in this procedure that would continue negotiations without the assistance of mediation.

Section 6. It will be the function of the mediator to assist both parties without taking sides. The mediator will make no public recommendations concerning issues.

Section 7. When the service of FMCS fails to resolve a negotiation impasse, the issue involved will be referred within fourteen (14) calendar days to the Federal Impasse Panel by the Local and/or Forest Supervisor/Center Director, or both, in accordance with Chapter 71, Title 5, U.S. Code, as amended.

ARTICLE 9

Union Representation

Section 1. Management recognizes the right of the Union to designate union representatives. It is understood that the Union, in appointing such Union representatives, does so for the express purpose of improving relationships by helping to settle problems at the lowest possible organizational level. The Union will provide the Employer with electronic lists of all designated Union representatives within 30 days of the effective date of this Agreement. The Union will provide an updated list when there is a change to a designated Union representative within two (2) calendar days. Only those employees identified on the list provided by the Union will be authorized to use union time.

Section 2. Management and the Union recognize that work supervisors are the key persons for Management and union representatives are key persons for the Union. It is agreed that work supervisors and union representative(s) will strive in good faith to:

- A. promote and maintain high morale and friendly relations;
- B. cooperate in their dealings;
- C. settle grievances as they arise in a positive manner;
- D. respect each other's position.

Section 3. The Union and Management agree that the following conditions will be observed in performance of union representative functions.

- A. The union representative will observe all rules of conduct established by law, regulation, Agency and Forest policy.

- B. The union representative shall obtain permission from his/her work area to perform the union representative function. This request of the union representative shall include information as to the general purpose of absence, where he/she will be and how long he/she expects to be gone.
- C. Union requests for official time will be granted based on workload, number of employees available, types of skills needed to accomplish the work, emergency conditions, etc.
- D. If an official time request is denied, official time will be granted at the earliest available opportunity. It is anticipated that Union officials will spend the majority of their paid time, measured each fiscal year, performing agency business including attending necessary training (as required by the Employer), in order to ensure that they develop and maintain the skills necessary to perform their Employer's duties efficiently and effectively. Authorization of taxpayer funded union time under section 7131(d) of title 5, United States Code, shall be reasonable, necessary, and in the public interest. However, the total number of official time hours used by Union Representatives in this unit will be no greater than 80 hours per year (Union Bank), excluding term negotiations, FLRA proceedings, and FSIP proceedings.
- E. Upon release from work, the union representative will call the supervisor of bargaining unit Employee and request reasonable time to carry out union representation work. The union representative will inform his/her work supervisor when he/she returns to his/her normal work functions and record timesheet according to the representational function.
 - 1. Consistent with 5 U.S.C. 71 and this Agreement, union representatives will be granted union time, subject to availability and as described below for only the following representational activities. Negotiations (limited to Term Negotiations) – to prepare for and negotiate a collective bargaining agreement, in accordance with 5 U.S.C 7131(a). Union representatives will use Transaction code 35.
 - 2. Mid-term negotiations under Article 7 – to prepare for and bargain over issues raised during the life of a term agreement, in accordance with 5 U.S.C. 7131 (a). Union representatives will use Transaction code 36.
 - 3. Dispute Resolution – to appear in proceedings before the Federal Labor Relations Authority during such time as an employee would otherwise be in a duty status, in accordance with 5 U.S.C. 7173 (c). Union representatives will use Transaction code 37.
 - 4. General Labor-Management Relations – to perform miscellaneous representational activities authorized under 5 U.S.C 7131(d), subject to availability of hours in the Union Bank as described in section D. Union representatives will use Transaction code 38.

- C. The union representative function will be performed in a dignified manner and if possible will not be performed in full view of the general public, students, and other unconcerned individuals.

ARTICLE 10

Training

Section 5. It is of mutual interest to Management and the Union to see that the Employees perform at the highest professional level at all times. Effort will be made by Management to see that Employees are given the opportunity to attend courses, conferences and seminars to add in their development and achieve the goals and objectives of Management.

Section 6. Employees will discuss their training needs with their work supervisors to develop individual training plans. Training provided by Management will have primary focus on the present job and secondary on developmental activities, which will broaden Employees for further responsibilities. Individual training plans will be reviewed per the requirements of the current Department Regulations by the work supervisor with the Employee to ensure that the plan is followed.

Section 9. The travel time to attend workshops, seminars, and training, etc., may be compensated for by Management in accordance with provisions of Federal Travel Regulations, Title 5, and the Fair Labor Standards Act.

ARTICLE 11

Equal Employment Opportunity

Section 1. Management agrees not to discriminate on the basis of race, color, religion, sex, national origin, age, disability, reprisal (for prior participation in an EEO activity or having opposed discrimination), political affiliation, sexual orientation, marital status, parental status, or genetic information. Management and the Union agree to cooperate in supporting equal opportunity for all employees.

Section 2. Management and the Union agree to support the work environment program to eradicate every form of prejudice and discrimination based on age, sex (including sexual harassment or on the basis of marital status), race, religion, color, national origin, disability, or political affiliation, or other prohibited bases.

Section 3. Management will post current agency EEO complaint contacts and procedures.

Section 4. Disputes over the interpretation and application of this Article shall be processed under the negotiated grievance procedure or statute.

ARTICLE 12

Contracting Out of Work

Section 1. Management will inform the Union when a proposed contracting activity will affect bargaining unit position(s).

Section 2. Placement will be in accordance with current Agency guidance (i.e. WRAPS).

Section 3. If contracting out adversely impacts Employees, the Union and Management may negotiate on appropriate arrangements for those Employees.

ARTICLE 13

Performance Standards and Evaluation

Union and Management agree that performance management will be in accordance with the most current Department Regulation (DR 4040-430 – Employee Performance Management) and Agency performance management system (FSH 6109.13).

ARTICLE 14

Tour of Duty and Assignment of Work

Union and Management agree that tours of duty will be in accordance with current Alternative Work Schedule (AWS) regulations and guidelines.

ARTICLE 15

Leave

It is understood that a request for leave 2 days or less can be oral or written and the approval can be oral or written as well. Oral requests will normally be answered orally and documented on the timesheet. Supervisors have the right to ask for requests in writing. Written requests for leave will be answered in writing. OPM-71 form is required for leave requests longer than 2 days. Final action on absences will be documented in the Agency's time and attendance system.

Section 2. Annual Leave. Employees have the right to use annual leave, but supervisors have the authority to approve or disapprove the time when annual leave may be taken.

An employee must request annual leave as far in advance as practical. In the case of unscheduled leave or unplanned absence from duty, the employee shall notify their supervisor, orally or in writing, within the first two (2) hours of absence. If the employee is unable to notify their supervisor within the first two (2) hours of absence, they shall notify their supervisor as soon as possible.

The decision to approve when leave may be taken must take into consideration the needs of the Employer along with the employee's request. The employee's annual leave request shall be approved as far in advance as practical. In the case of unscheduled leave or unplanned absence, the supervisor will consider the request and make a decision as to how the absence will be charged.

Section 3. Sick Leave. An employee must request sick leave as far in advance as practical for reasonably foreseeable absences (e.g. medical appointments). An employee who is absent due to unforeseeable illness or injury shall notify their supervisor, orally or in writing, within the first two (2) hours of absence. If the employee is unable to notify their supervisor within the first two (2) hours of absence, they shall notify their supervisor as soon as possible.

The employee's sick leave request shall be approved as far in advance as practical. In the case of unscheduled leave or unplanned absence, the supervisor will consider the request and make a decision as to how the absence will be charged.

Administrative and Other Leave

Section 6. Adverse weather and closures will be in accordance with current Department Regulations and 5 C.F.R. Part 630, Subpart P (Weather & Safety Leave).

Section 7. Holidays and non-duty days in conjunction with approved leave time will not be scheduled for overtime or holiday work except in emergencies as defined in Article 2, Section 13.

ARTICLE 16

Promotions and Detail

Union and Management agree that merit staffing will be in accordance with the most current Department Regulation (DR 4030-335-002 – Merit Promotion and Internal Placement).

ARTICLE 17

Health and Safety

Section 1. Management agrees to provide a safe and healthful work place for all Employees and will comply with applicable Federal laws and regulations relating to the safety and health of Employees. All Employees are responsible for taking immediate action to correct or identify observed unsafe conditions if possible, or if not possible, for promptly reporting the unsafe conditions to the appropriate work supervisor.

Section 2. Management and the Union will cooperate in the continuing efforts to eliminate accidents and health hazards.

Section 3. Protective personal equipment, when determined necessary by a Job Hazard Analysis, will be furnished and used by all Employees.

Section 5. An Employee or group of Employees who believe that they are being required to work under conditions which are unsafe or unhealthy beyond the normal hazards inherent to the operation in question shall have the right to raise their concerns in all appropriate forums and to file a grievance under the negotiated grievance procedure.

ARTICLE 18

Discipline and Adverse Actions

Section 1. Disciplinary actions and adverse actions will be taken in accordance with applicable laws, rules, and regulations in effect at the time of the action. The specific penalty for an instance of misconduct shall be tailored to the facts and circumstances of the situation. In order to determine the appropriate penalty for an Employee such as a disciplinary or adverse action, the Employer will, subject to applicable law, rule, and regulation, consider the relevant factors articulated by the Merit Systems Protection Board in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981) to applicable adverse actions). Management maintains discretion to discipline Employees without using progressive discipline.

Discipline is any action taken against an Employee that results in a letter of reprimand, suspension without pay, reduction in pay or grade, or removal from the Forest Service.

Section 2. Admonishments and counselings are not formal disciplinary actions to which the procedures in this Article apply. Admonishments and counselings, which may be oral or written, may be used when an Employee's conduct or performance is less than acceptable and it is likely that an informal action will result in improvement. Admonishments and counselings are neither grievable nor appealable.

Section 3. For purposes of this Agreement, discipline will be divided into three types: (a) Letter of Reprimand; (b) suspension for fourteen (14) days or less; (c) suspension of more than fourteen (14) days, removal, furlough without pay, or reduction in pay or grade.

- A. Letter of Reprimand: A Letter of Reprimand may be issued directly to an Employee without a proposal letter and will be sufficiently specific to indicate why the letter is being issued.
 - 1. The Letter will advise the Employee that the reprimand will be retained in the Official Personnel Folder for a period of two (2) years, but may be removed by the Employer at its sole discretion any time with the 2-year period.
 - 2. A reprimand shall inform the Employee of his/her appeal/grievance rights as required by law. Employees may file a grievance over the issuance of a Letter of Reprimand under the grievance procedure contained in this Agreement.

- B. Suspension of fourteen days or less: The following applies to an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed one year of current continuous employment in the same or similar positions under other than a temporary appointment limited to one year or less. Such an Employee is entitled to:
 - 1. Not less than seven (7) calendar days a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer. The deciding official may extend the reply period if he/she determines that good cause exists for an extension based on extenuating circumstances;
 - 2. be represented by themselves, or a Union representative, or an attorney with a financial liability waiver of attorney's fees, or other representative;
 - 3. written decision at the earliest practicable date containing the specify reasons for the decision and notifying the Employee of his/her appeal rights;
 - 4. grieve the decision, if adverse, through the negotiated grievance procedure contained in Article 19. The written decision will advise the Employee of this right.

- D. Removal, suspension for more than fourteen days, furlough for thirty days or less, or reduction in pay or grade: The following applies to (1) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed one year of current continuous employment under other than a temporary appointment limited to one year or less; and (2) a preference eligible in the excepted service who has completed one year of current continuous service in the same or similar positions. Such an Employee is entitled to:

1. 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. Not less than seven (7) calendar days to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer; The deciding official may extend the reply period if he/she determines that good cause exists for an extension based on extenuating circumstances;
3. be represented by a Union representative, an attorney or other representative;
4. a written decision and the specific reasons therefore at the earliest practicable date;
5. appeal the decision, if adverse, to the appropriate office of the Merit Systems Protection Board (MSPB). The written decision will advise the Employee of this right and of the appropriate MSPB office.

Section 4. Action by the Deciding Official: After carefully considering the evidence and the Employee's response, if any, including any mitigating factors, the Deciding Official shall decide:

- A. to withdraw the proposed action;
- B. to institute a lesser action;
- C. to institute the proposed action.

Section 5. A written copy of the Letter of Reprimand, or Notice of Proposed Action or Decision will be furnished to the Employee.

ARTICLE 19

Grievance Procedure

Section 1. The purpose of this Article is to provide for a mutually acceptable method for the prompt and equitable settlement of Employee grievances and disputes. This negotiated procedure shall be the exclusive procedure available to Employees in the bargaining unit in accordance with Chapter 71, 5 USC. The following matters are excluded from coverage under this grievance procedure:

- A. Any claimed violation of 5 USC, Chapter 71, Subchapter III, relating to prohibited political activities (Hatch Act);
- B. Retirement, life insurance, or health insurance;
- C. A suspension or removal under 5 USC 7532 (National security reasons);
- D. Any adverse action that is appealable to the MSPB, including: Removal, suspension for more than fourteen days, furlough for thirty days or less, or reduction in pay or grade;

- E. Any examination, certification, or appointment;
- F. The classification of any position which does not result in the reduction in grade or pay of an Employee;
- G. Termination of probationary Employees;
- H. Non-adoption of a suggestion, or disapproval of a quality increase or performance award;
- I. Termination of a temporary promotion when the need or funding for the appointment ends;
- J. Non-selection for promotion from a group of properly ranked and certified candidates;
- K. Performance rating of record;
- L. An award of any form of incentive pay, including cash awards; quality step increases; or recruitment, retention, or relocation payments.

Section 2. Most grievances arise from misunderstandings or disputes, which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level. Management and the Union agree that every effort will be made by Management and the aggrieved party/parties to settle grievances at the lowest possible level. In as much as dissatisfactions and disagreements arise occasionally among people in a situation, the filing of a grievance shall not be construed as reflecting unfavorably on an Employee's good standing, performance, loyalty or desirability to the organization. An Employee may have a representative of his/her choice at any step of the grievance procedure.

Section 3. Employees, union representatives and all other persons involved in the presentation of a grievance will be free from restraint, interference, coercion, discrimination or reprisals. Reasonable time during duty hours will be allowed for Employees and union representatives to discuss, prepare for and present grievances at all levels in accordance with the release procedures in Article 9, Section 5(B). Regardless of whether the grievant has requested Employee representation, the Union has the right to attend and will be informed of them.

Section 4. When a group of Employees have an identical grievance, it may be considered a group grievance. However; any Employee may elect to have his/her grievance processed separately. Such an election must be made prior to entering into Step 2 of the grievance procedure.

Section 5. The Employee or representative may terminate the grievance at any time by giving written notice to the Forest Supervisor/Center Director.

Section 6. Both parties, by mutual agreement, may extend the time limit at any step within the negotiated grievance procedure. Failure of Management to observe the time limits shall entitle the Employee to advance the grievance to the next step.

Section 7. A grievance file will be maintained by Management for each case that goes beyond Step 1. The file will contain:

- A. the written complaints;
- B. the summary of discussions of all proceedings at each step;
- C. documentary evidence considered in resolving the grievance; and
- D. the written decision rendered at each step.

On request, the Employee or Employee's representative will be furnished a copy of all materials in the grievance file.

Section 8. Any rejection of a grievance on the grounds that it is not a matter of subject to this grievance procedure, or is not subject to arbitration, will be served upon the Union in writing. All disputes of grievability or arbitrability shall be referred to arbitration as a threshold issue in the related grievance.

Section 9. Employees using this grievance procedure must be represented by an individual approved by the Union, except in those situations where the Employee elects to represent him/her self. Any adjustment in which the Union does not represent the Employee may not be inconsistent with the terms of this agreement and the Union will be given the opportunity of being present at the adjustment. Only the Union will be entitled to invoke arbitration of an Employee grievance under the arbitration Article of the Agreement.

Section 10. The grievance procedure shall consist of the following steps:

Employee Grievance

Step 1 - The Employee or union representative submits his/her grievance in writing to his/her direct supervisor or designee within fourteen (14) calendar days after the act or occurrence; or the date the Employee became aware of the act or occurrence. The parties agree that an identifiable action with a determinative date will serve as the initial filing date of a grievance. In no instance will a "continuing violation" theory be used to extend a grievance filing deadline. District Ranger or Staff Officer or designee will give his/her decision in writing to the Employee within fourteen (14) calendar days after the grievance was received by Management. A copy of Management's written decision will be sent to the grievant and the appropriate union representative.

The Employee may request the Union to represent him/her, but in any case the Union will be notified that the grievance has been filed with the Forest Supervisor/Center Director and of the date, time and place which has been set up to discuss the grievance with the Employee. The Union will be given the opportunity to be present at the formal discussion.

Step 2 - If the Employee is still dissatisfied, he/she may refer the written grievance and Management's step 1 written decision to the Forest Supervisor/Center Director or designee within fourteen (14) calendar days after the date he/she receives Management's step 1 decision. The Forest Supervisor/Center Director or designee will arrange to formally discuss the matter with the Employee within fourteen (14) calendar days after the date of receipt of the grievance and decision.

The Employee may request the Union to represent him/her, but in any case the Union will be notified that the grievance has been filed with the Forest Supervisor/Center Director and of the date, time and place which has been set up to discuss the grievance with the Employee. The Union will be given the opportunity to be present at the formal discussion.

The Forest Supervisor/Center Director, or designee will provide his/her decision to the Employee within fourteen (14) calendar days after the date of the discussion of the grievance. The Forest Supervisor/Center Director, or designee's decision will be submitted in writing.

If the responding official's written decision does not result in satisfactory settlement, the Union may initiate resolution of the grievance by arbitration by serving written request for arbitration to the Step 2 responding official, within fourteen (14) calendar days after receipt by the Employee (copies to Union and his/her representative) of the responding official's written decision. Such request will be processed in accordance with Article 24.

Management Grievance

Step 1 - If Management is the grieving party, representatives of the two parties may informally discuss and attempt to resolve the grievance within fourteen (14) calendar days after the act or occurrence or the date that the grieving party is aware of the act or occurrence. A copy of the grievance must be presented in writing at the time of the informal discussion or be submitted to the Union within fourteen (14) calendar days of the act or occurrence or the date the grieving party is aware of the act or occurrence.

The decision of the party receiving the grievance will be issued to the grieving party in writing within fourteen (14) calendar days after the informal discussion or when the written grievance was issued. Such decision will include a statement of the grievance as well as the statement of the decision.

If the grievance is not resolved under Step 1 of this procedure, the grieving party will have the opportunity to present the grievance to arbitration in accordance with Article 24, Arbitration. A written request must be served on the other party within fourteen (14) calendar days after receipt of the written decision in Step 1.

Section 11. All time limits in this Article may be extended by mutual agreement of Management and the Union. Failure to observe time limits will entitle the grieved party to advance the grievance to the next step. Failure to observe the time limits will terminate the grievance.

Section 12. Union representatives and aggrieved Employees will be permitted a reasonable amount of official time while preparing for a grievance or appeals and hearings.

ARTICLE 20

Arbitration

Section 1. The use of arbitration as set forth herein will apply to grievance over interpretation or application of the Agreement. Arbitration shall be invoked only by the Union or Management. Striking first will be determined by a toss of the coin. Winner will strike first from the list of arbitrators.

Section 2. Within ten (10) calendar days after the date of receipt of a request for arbitration by either party, Union or Management, both parties will meet for the purpose of selecting a qualified arbitrator. If agreement cannot be reached, then either party may request Federal Mediation and Conciliation Service to provide a list of five impartial persons qualified to act as arbitrators. The parties will meet within five calendar days after the receipt of such list. If the parties cannot mutually agree upon one of the listed arbitrators, the parties will each strike one arbitrator's name from the list of five and shall then repeat this procedure. The remaining person will be the duly selected arbitrator.

Section 3. If, for any reason, either party refuses to participate in the selection of an arbitrator, the other party may then choose any person from the Federal Mediation and Conciliation Service Roster to be the duly selected arbitrator.

Section 4. The arbitrator will limit his/her decision to the particular grievance in question. His/her decision will be issued as quickly as possible, after the conclusion of the hearing; unless the parties mutually agree to extend the time limit.

Section 5. The arbitrator's award will be final except that either party may file an appeal to the Federal Labor Relations authority subject to the authority regulations.

Section 6. Costs and fees of the arbitrator will be borne equally by Union and Management. Management agrees to pay attorney's fees when determined to be appropriate by the arbitrator in accordance with Chapter 71 of Title 5 of the United States Code.

Section 7. Transcripts: The cost of a transcript, requested by one party for its exclusive use and not shared, shall be borne by the requesting party. If it is mutually agreed to request a transcript, the cost will be borne equally.

Section 8. The arbitration hearing will be held, if possible, on the Management's premises at a time during the period Monday through Friday, 8:00 a.m. to 5:00 p.m. All Employees in the hearing will be in pay status.

Section 9. Back Pay: Back pay for contractual violations or statutory infractions will be limited to no more than six months prior to the grievance, absent good cause demonstrated by the employee or union by the preponderance of evidence.

ARTICLE 21

WORKFORCE RESTRUCTURING AND PLACEMENT SYSTEM (WRAPS) AND REDUCTION IN FORCE

Workforce Restructuring and Placement System (WRAPS)

Union and Management agree that WRAPS procedures will be in accordance with the most current Forest Service policy (FSH 6109.12 - Employment and Benefits, Chapter 20 Internal Placement).

Reduction in Force

Section 1. Notice of a proposed Reduction in Force (RIF) will be given in accordance with Government-wide regulations, allowing the Union an opportunity to negotiate to the extent required by the Labor Statute. The major purposes of this negotiation are to obtain the views and cooperation of the Union in regard to:

- A. increasing understanding of RIF procedures and employee rights in order to reduce insecurity;
- B. proposals for placement of Employees to reduce any unavoidable adverse impact;
- C. methods to keep Employees informed with regard to events as they occur and related procedures; and
- D. all other negotiable areas of impact and implementation.

Section 2. Options Management will consider when a decision is made by Management to abolish bargaining unit positions on the Nebraska National Forest and Grasslands/Pine Ridge Civilian Conservation Center:

- A. Attrition - Vacant positions will be reviewed for non-filling.
- B. Discontinued Service Retirement - Will be offered to affected employees who qualify.
- C. Reassignment – Management may reassign affected Employees to positions for which they qualify. Management will make an effort to find assignments for those employees who can't be reassigned on the Nebraska National Forest and Grasslands/Pine Ridge Civilian Conservation Center. If
- D. Retraining- This will be considered an available option, and where appropriate, the same reassignment process described in item #C may be considered.
- E. Restructuring of positions will be considered.
- F. Optional retirement will be made available to qualified Employees in accordance with general eligibility requirements.

The list of options is not exclusive, and the order listed does not necessarily represent the order of application. As any of the procedures create impact on the bargaining unit and have an impact on working conditions, the bargaining unit will be notified in writing of decision to contract out, job abolishment, or reductions-in-force.

ARTICLE 22

Dues Withholding

Section 1. This Article covers all Employee-members in exclusively recognized unit, who:

- A. are members in good standing in AFGE;
- B. voluntarily completed Standard Form 1187; and,
- C. receive compensation which is not subject to deductions of a higher priority and is sufficient to cover the total amount of the allotment.

Section 2. The Union and the Employer agree that the provisions of this Article are subject to and will be governed by applicable Federal laws, rules and regulations, including the regulations of the Office of Personnel Management. The Employer agrees to deduct dues in accordance with the Union's scheduled amount.

Section 3. The specific officer in the local Union designated to receive the dues deductions will be the elected treasurer.

Section 4. The Union agrees to assume the responsibility for:

- A. Informing and educating its Employee-members on the voluntary nature of the system for the allotment of labor organization dues, including conditions under which the allotment may be revoked.
- B. Purchasing and distributing to its Employee-members SF-1187/SF-1188.
- C. Keeping the Employee-member's servicing payroll office informed, in writing, of any changes in the person authorized to sign SF-1187.
- D. Inform the servicing payroll office of the names of any participating Employees who have been suspended or ceases to be a member in good standing in the Union within three (3) workdays of the date of receipt of final determination, and
- E. Inform the servicing payroll office of any change in the amount of membership dues. The Union may not change the amount of dues more than once in a twelve month period.

Section 5. The Employee agrees to assume the responsibility for:

- A. Forward properly executed and certified SF-1187 to servicing payroll office through Human Resources on a timely basis indicating amount of dues to be withheld

Section 6. The Employer agrees that it is responsible for:

- A. Permitting and currently processing voluntary allotment of dues in accordance with this agreement.
- B. Withholding dues on a biweekly basis. A check will be issued each pay period.

- C. Withholding dues in accordance with the amount certified by the authorized Union official.
- D. Transmitting remittance checks to the allottee designated by the Union together with a duplicate listing of Employee-members for whom deductions were made on a biweekly basis.
- E. Providing a remittance listing to the Union containing the following information:
 - 1. A listing by:
 - a. the name of each Employee for who deduction is being made during the current pay period; and
 - b. the name of each Employee-member for whom deductions have been authorized.
 - 2. The total amount deducted and the total number of deductions.

Section 7. Joint Stipulations; Parties to this Agreement agree administrative errors in remittance checks will be corrected and adjusted in the next remittance check issued to the employee organization.

Section 8. The effective dates for actions under this Agreement are as follows:

- A. Starting Dues Withholding: Beginning the first pay period after date of receipt of properly executed and certified Standard Form 1187 in the Payroll Office.
- B. Change in Amounts of Dues: Beginning the first pay period after receipt of certification in Payroll Office.
- C. Non-renewal. If the Employee does not reauthorize their deduction, the deduction shall automatically terminate. Consistent with 5 U.S.C. 7115(a), authorization for dues allotments shall last for one year and shall be irrevocable during this period, except as stated in 5 U.S.C. 7115(b) and subsection 11(d) of this Article. At the first pay period after the anniversary of the first deduction, the allotment shall expire unless the Employee submits a new, completed, signed and certified SF-1187 to payroll within 30 days of the annual anniversary of their initial authorization. If an Employee does not submit the SF-1187 within the thirty (30) calendar day period of the anniversary date of the first deduction, the allotment will expire. An SF-1187 that is not received in a timely fashion will be treated as a new request.
- D. Termination due to loss of membership in good standing: Beginning the first pay period after date of receipt of notification in Payroll Office.
- E. Termination due to loss of exclusive recognition upon which allotment was based: Beginning of first pay period following loss of receipt of recognition.
- F. Termination due to separation, transfer, or other personnel action
 - 1. If action is effective first workday of pay period, termination of allotment will be at end of preceding pay period.
 - 2. If action is effective on any workday other than first day of a pay period, termination of allotment will automatically be at end of such pay period.

3. In case of death, no deduction will be made for the pay period in which death occurred.
- G. Other reasons for non-deduction of dues.
1. No deduction will be made during a pay period where an employee's earnings (part-time or intermittent) are not regularly sufficient to cover the amount of the allotment.
 2. If deductions are stopped temporarily because of insufficient salary, back dues will not be deducted from future earnings.
 3. No dues will be withheld if net salary after other legal and required deductions is not sufficient to cover the amount of dues.
 4. Dues would be stopped on effective date of a temporary or permanent promotion to supervisory position or into a non-bargaining position.

ARTICLE 23

Duration of Agreement, Amendments and Supplements

Section 1. The effective date of this Agreement or supplement or amendment thereto will be the date of its approval by the Department due to the Agency Head Review process. However, any Article not approved or disapproved within thirty (30) calendar days from the date of execution will go into effect on the 31st day without the required approval of the Department and will be binding on the parties subject to the provisions of law and any other applicable rules or regulations.

Section 2. This Agreement will remain in full force and effect for five (5) years from its effective date. Either party may give written notice to the other party not more than ninety nor less than sixty days prior to the end of the contract period of its intention to reopen the agreement. When such notice given, the parties will meet for the purpose of negotiations within thirty (30) calendar days prior to the end of the contract period. Such notice will give the reasons for the proposed action.

If the collective bargaining agreement expires during negotiations, only the mandatory subjects continue in full force and effect and all permissive items terminate.

Section 3. The parties by mutual agreement may amend or supplement this Agreement once the Agreement has been in agreement for twelve (12) months, and yearly thereafter. Any request for amendment from either party shall be in writing and must include a summary of the proposed amendment or supplement. Changes other than those covered by the subject matter of the summary will be considered. Such requests must be submitted not earlier than ninety days nor later than sixty, days prior to the anniversary date of the Agreement.

No sooner than 18 months after the effective date of this Agreement, either party may open relevant articles in order to address any changes in law, Agency Policy or Department Regulations.

Section 4. After approval of this Agreement by the Department, or after 45 days from the date of execution, whichever comes first, the Forest Supervisor/Center Director or his/her representative and the Union President or his/her representative will jointly schedule and conduct a training meeting for the purpose of reviewing this agreement. The participants of this meeting will be, as a minimum, all Management and supervisory personnel and all of the Local 3363's officers and union representatives.

ARTICLE 24

Copies of Agreement

Section 1. Management will type up the contract.

Section 2.

An electronic copy of the Agreement will be available for employee access, and new employees will be furnished notice of availability and hyper-link.