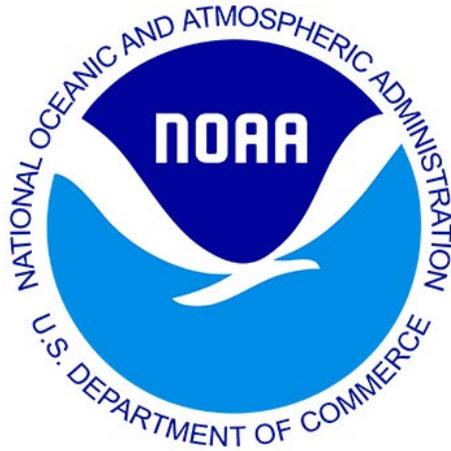


**COLLECTIVE BARGAINING AGREEMENT**

**BETWEEN**



**THE NATIONAL OCEANIC AND ATMOSPHERIC  
ADMINISTRATION,  
BOULDER, COLORADO**

**AND**

**THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES  
LOCAL 2186**

**EFFECITVE: November 19, 2020**

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## **PREAMBLE**

In accordance with Title VII, Civil Service Reform Act of 1978, hereinafter referred to as the Statute this Agreement is made and entered into by the Department of Commerce (DOC), National Oceanic and Atmospheric Administration's (NOAA), Boulder offices of OCAO, AGO/WAD, and OAR/ESRL/Boulder Labs Library, Boulder, Colorado, hereinafter referred to as the "Employer", and American Federation of Government Employees (AFGE), Local 2186, hereinafter referred to as the "Union". Collectively, they are referred to as the "Parties." References to "Agency" correspond to the Employer and/or higher-level Executive Branch entities above MASC, Boulder, CO, including NOAA, Department of Commerce, and or Office of Personnel Management.

The Employer and the Union agree the labor-management relations within the offices of OCAO, AGO/WAD, and OAR/ESRL/Boulder Labs Library, Boulder, CO are strengthened through a constructive and cooperative relationship between the Employer and the Union.

The Parties affirm that 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.

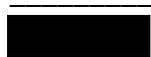
The Parties enter into this Agreement with the mutual intent of preserving and protecting work and job opportunities for the Employees covered by this Agreement.

## **ARTICLE 1: SCOPE, DURATION AND AMENDMENTS**

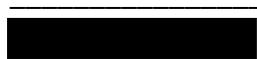
The effective date and the anniversary date of this Agreement shall be the date of approval by the U.S. Department of Commerce. This Agreement shall remain in effect for three (3) years from its effective date and shall automatically be renewed for one (1) year on the anniversary date thereafter. Between 120 and 60 calendar days prior to the renewal date, either Party can give written notice to the other of its desire to amend, renegotiate, or terminate the Agreement. The notice must be acknowledged in writing by the other Party within fifteen (15) calendar days of receipt. Such a notice will be accompanied by proposed ground rules. Negotiations shall begin no later than sixty (60) calendar days after these conditions have been met. The Parties may extend this timeframe by mutual agreement. The Agreement may be rolled over on a yearly basis by mutual agreement.

Amendment to this Agreement may be required due to changes in applicable laws, rules, or regulations issued after the effective date of this Agreement. In this event, the Parties shall meet for the purpose of negotiating new language in compliance with these changes. Such amendments will be duly executed and will become effective on the date determined to be appropriate under the circumstances necessitating the amendment.

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Director  
Western Acquisitions Division  
NOAA

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Chief Negotiator  
NOAA

Effective Date: November 19, 2020

## **ARTICLE 2: RECOGNITION AND UNIT DESIGNATION**

The Union is the exclusive representative of Bargaining Unit Employees. The bargaining unit consists of all Federal professional and nonprofessional personnel employed by the DOC/Boulder offices of OCAO, AGO/WAD, and OAR/ESRL/Boulder Labs Library, Boulder Colorado.

Excluded from the bargaining unit are all management officials, supervisors, and employees described in 5 United States Code (U.S.C.) § 7112 (b) (2), (3), (4), (6). And (7), Employees of Boulder offices of OCAO, AGO/WAD, and OAR/ESRL/Boulder Labs Library, Boulder, Colorado.

The Union recognizes its responsibility of representing the interests of all such employees in accordance with 5 U.S.C. § 7114.

## **ARTICLE 3: GENERAL PRINCIPLES AND POLICIES**

### **Section 1**

The Parties enter into this Agreement with the mutual intent of preserving and protecting work and job opportunities for the Employees covered by this Agreement.

### **Section 2**

It is the intent of the Parties to promote and improve the efficient administration of Boulder offices of OCAO, AGO/WAD, and OAR/ESRL/Boulder Labs Library, Boulder, Colorado and to establish a basic understanding in accordance with Employer, Employee, and Union Rights and Responsibilities.

### **Section 3**

Definitions of terms used in this Agreement shall be as defined in the Statute (Title V, Civil Service Reform Act of 1978).

### **Section 4**

The Union as the exclusive representative of the Employees within the bargaining unit, as specified in Article 2 (Recognition and Unit Designation) shall have the right and responsibility to present its views to the Employer, either orally or in writing in accordance with Article 5 (Employee Rights).

### **Section 5**

The Parties recognize that the efficient and effective operation of the Employer is in the public interest, and the provisions of this Agreement will be interpreted in a manner consistent with the requirement of an effective and efficient government.

### **Section 6**

The Parties agree to support efforts to eliminate fraud, waste, and abuse, and promote a safe and productive work environment.

## Article 4: Management's Rights

### **Section 1**

Subject to Section 2, and pursuant to 5 USC § 7106 (a), nothing in Title 5, Chapter 71 USC, shall affect the Employer's authority:

- A. to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
- B. in accordance with applicable laws:
  - 1. To hire, assign, direct, layoff, and retain employees in the Boulder offices of OCAO, AGO/WAD, and OAR/ESRL/Boulder Labs Library, 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 agency 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
  - 4. to take whatever actions may be necessary to carry out the mission of the Boulder offices of OCAO, AGO/WAD and OAR/ESRL/Boulder Labs Library during emergencies

### **Section 2**

Nothing in this Article shall preclude the Employer and the Union from negotiating:

- A. procedures which Employer officials will observe in exercising any authority under this article;
- B. appropriate arrangements for employees adversely affected by the exercise of any authority under this Article by such Employer officials

## **Article 5: Employee Rights and Responsibilities**

### **Section 1**

The parties agree that Employees have workplace rights and responsibilities, Employees have workplace rights as defined in 5 U.S.C. § 7102 and applicable regulations. Subject to these rights, Employees are expected to follow the direction of management.

### **Section 2**

A. Employees have the right to have a Union representative at:

1. All formal discussions between the Employer and the Employee concerning any grievance, or any personnel policy or practices or other general condition of employment, as provided for in 5 U.S.C. § 7114(a) (2) and applicable regulations.
2. Any examination of an employee in the unit by a representative of the agency in connection with an investigation if, (i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and (ii) the employee requests representation, as provided for in 5 U.S.C. § 7114(a)(2) and applicable regulations.

B. The Employer retains the right to hold counseling sessions with Employees without the presence of a Union representative. Counseling sessions may include an informal discussion between individual Employees and their supervisors regarding the Employee's performance; work assignments and procedures; application of established office practices; leave practices and requests; and discussions of a personal nature.

### **Section 3**

Nothing in this Agreement shall require an employee to be a member for the payment of dues to become a member of the Union, or to pay money to the union except pursuant to a voluntary written authorization by a member for payment of dues through payroll deduction.

### **Section 4**

Employees are protected by the Whistleblower Protection Act, against reprisal for the lawful disclosure of information which the employee reasonably believes evidences a violation of law, rule or regulation, or evidence of mismanagement, a waste of funds, an abuse of authority, or a danger to health and safety.

## **Section 5**

A Union representative's role during a Weingarten or other administrative inquiry/investigation is limited to advising the Employee of his/her rights. The Union representative may not disrupt the meeting and may not answer for the Employee.

## **Section 6**

Nothing in this agreement will preclude an Employee from being represented by an entity other than the Union, except in the negotiated grievance procedure. If an employee chooses other representation in exercising their appellate rights as established by law, rule or regulation, Employee must advise the Union of their choice of representation.

## **Section 7**

- A. Employees are required to carry out the lawful instructions of a supervisor or any other Management official with real or apparent authority. If there is a disagreement between the Employee and the supervisor or other management official, the Employee will comply with the instructions and, if desired, challenge the matter later.
- B. Employees must be courteous and professional at all times while in duty status or in other situations in which the Employee is representing the Agency.
- C. Employees are required to cooperate in any official investigation conducted by the Employer. Employees may be subject to disciplinary action for refusing to respond and or to cooperate, or for failing to respond truthfully.
- D. Employees are expected to be at their duty station on time, as scheduled. Employees must provide advance notice of their absences (including use of official time) and request leave well in advance, in accordance with the specific contractual provisions and other applicable laws, rules, regulations, and policies.
- E. Employees must provide contact information, such as their telephone or cell phone numbers, if requested by the Employer. The Employer will safeguard this information which will be used for official purposes only.
- F. In accordance with 5 C.F.R. 630.405, when requested Employees must provide administratively acceptable medical documentation as required to substantiate absences or request for leave.

## **Section 8**

The Employer agrees to provide retirement planning information or counseling to employees who are within twelve months of retirement.

## **Section 9**

Employee donations to the Combined Federal Campaign, blood drives, and other solicitations will be voluntary, and Employees will not be coerced to contribute.

## **Section 10**

When an Employee wishes to request permission to leave the work site to contact a Union representative, the Employee must provide his/her supervisor with enough information regarding the nature of the visit for the supervisor to determine what is a reasonable amount of time for the Employee to be gone. The Employee must obtain approval from his/her supervisor. The Employee must give the supervisor a telephone number at which s/he may be reached while absent in case of urgent work-related need.

## **Section 11**

- A. This section applies to all Employee communications made using government equipment such as: phone calls, text messages, voicemails, emails, faxes and any other communications, whether by telephone, facsimile, email, or any other media, as well as desks, phones, computers, files, furniture, and work spaces.
- B. The employer has a legitimate business, national security, and cybersecurity interest for monitoring Employees' use of Government property and equipment, and Employees have no right to privacy when using such property and equipment. Subject to applicable law, government-wide rule, or regulation, the Employer is not required to inform the Employee of a search of Government property or equipment or to allow the Employee or the Union to be present.

## **ARTICLE 6: Union Representation and Official Time**

### **SECTION 1**

The Agency will provide designated Union representatives official time in amounts that are reasonable, necessary and in the public interest under the provisions of 5 U.S.C §7131, pursuant to the Federal Service Labor-Management Relations Statute (FSLMRS) 5 U.S.C. § 71, and shall be administered in accordance with said Statute and this Agreement.

- A. "Official time" under this article is defined as duty time that a Union representative spends performing representational duties pursuant to 5 U.S.C. § 7131 and this agreement; as well as time that an employee may use for a grievance brought on the employee's own behalf; time that may be used for an employee appearing as a witness in any grievance proceeding; or time that an employee may use to challenge an adverse personnel action brought against the employee under certain whistleblower laws.
- B. "Employee" under this article is defined as any bargaining unit employee, including Union Representatives.
- C. "Official Time Bank" is defined as the total number of available hours of official time per fiscal year that may be used in accordance with this article.

### **SECTION 2**

Management will recognize Union Representatives, who are so designated in writing by the Union. The Union will provide the Designated Management Representative with a roster containing the name, Union position (i.e. steward, etc.), duty location, email address and telephone number of all designated Union representatives within thirty (30) calendar days after the effective date of this Agreement. The Union will notify the Designated Management Representative in writing of any changes to Union representatives. Unless so designated in writing, no employee may be recognized as a Union Representative.

### **SECTION 3**

While on official time, an employee receives his or her regular salary if otherwise in a duty status. Official time will be granted to an employee only during regular working hours.

- A. Union representatives are not authorized to earn premium or differential pay, overtime or compensatory time (to include travel compensatory time) for their performance of Union representational duties.
- B. In accordance with 5 U.S.C. § 7131 (b), the use of official time is prohibited for internal Union business, which shall only be performed during the time the employee is in a non-duty status.

- C. Union representatives may not use official time to prepare or pursue grievances (including arbitration of grievances) brought against the Agency/Management. This does not preclude Union Representatives from being approved the use of non-duty time for this purpose (i.e. leave). An employee may use official time for a grievance brought on the employee's own behalf.
- D. Employees may not be permitted reimbursement for expenses incurred performing non-agency business, unless required by law or regulation.
- E. No employee when acting on behalf of a Union may be permitted the free or discounted use of Government property or any other Agency resources if such free or discounted use is not generally available for non-Agency business.
- F. Lobbying or political activities are not appropriate activities for which official time may be used. The Agency will not pay for official time or any associated expenses for any lobbying or political activities.
- G. Consistent with 5 U.S.C. § 71 and this Agreement, Union representatives will be granted official time, subject to availability as described below, for only the following representational activities:
  - 1. Term Negotiations: to negotiate a collective bargaining agreement, in accordance with 5 U.S.C. 7131(a)
  - 2. Mid-Term Negotiations: to bargain over issues raised during the life of a term agreement, in accordance with 5 U.S.C. 7131(a)
  - 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, as authorized in accordance with 5 U.S.C. 7131(c), excluding matters covered under the Parties negotiated grievance procedures.
  - 4. General Labor-Management Relations: to perform representational activities in accordance with 5 U.S.C. 7114 (a) (2) (A) and (B). Union Representatives' representational duties for which official time may be authorized under this subsection include:
    - a. To be present at any formal discussion between one (1) or more representatives of the Employer and one (1) or more employees in the unit concerning any personnel policy or practices or other general condition of employment; or

- b. To be present at any examination of an employee in the unit by a representative of the agency in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee, and the employee requests representation.
  
- H. The Official Time Bank will consist of no more than 1 hour of official time per bargaining unit employee on board as of October 1<sup>st</sup> per fiscal year. Management will provide the Union with the total number of bargaining unit employees on board each fiscal year. Unused official time hours do not carry over into the next fiscal year.
  
- I. The amount of official time will be requested and approved on a case-by-case basis, taking into consideration the specifics and time needed for each unique case as well as the needs of the Agency.
  
- J. Employees may be authorized official time to meet with Union representatives as requested and approved in advance.
  
- K. Meetings for which the Union serves as the exclusive representative for bargaining unit employees will be authorized official time only for the actual time of the meeting in which they were serving as the representative.
  
- L. Travel will not be considered as official time. Travel may be considered duty time.
  
- M. Official time may not be used without advance written authorization from the employee's Supervisor/Management Official. In cases where obtaining written prior approval is deemed impracticable, a verbal approval followed by a written authorization will suffice. In all cases, prior to approval, an official time request must first be submitted in writing in accordance with this Agreement.
  
- N. Union Representatives shall spend at least three-quarters of their paid time, measured each fiscal year, performing agency business or attending necessary training (as required by the agency). Union Representatives who have spent one-quarter of their paid time in any fiscal year performing non-agency business may only continue to use official time in that fiscal year for purposes covered by 5 U.S.C. 7131 (a) and (c). Anytime a Union Representative's official time hours exceed one-quarter of the employee's paid time in a fiscal year, the excess shall count toward subsequent fiscal years.

#### **SECTION 4**

Both Management and the Union agree that official time that is granted may have a direct impact on the staffing and ultimately the mission of the Employer, and official time should only be authorized if it is determined to be reasonable, necessary, and in the public interest. The Union agrees that in the interest of efficient government, all efforts will be made to use official time expeditiously, and that the effect on the work schedule of the employee's branch/section

is a factor in the decision as to when official time may be authorized. Only one Union representative may serve as a designated representative at any one time.

- A. Any request for official time must be submitted in writing by the employee to their first line supervisor for approval as soon as possible. If the official time is for any event scheduled in advance, such as training, Union negotiations, meetings, etc., the request shall be made as soon as the employee becomes aware of the event, but no less than 10 days in advance of when the official time is to take place. In the case of an unscheduled event that requires the employee's attendance, official time shall be requested as soon as possible.
- B. Any requests for official time must be submitted in advance and in writing using the Agency's approved timekeeping system (i.e. WebTA) and include the following information:
  1. The amount of official time requested, and for what period of time;
  2. The destination, and employee's contact information; and
  3. Specify the reason, representational code and category in WebTA.
- C. Management will make every effort to accommodate official time requests as mission allows. Management will render a decision as soon as reasonably possible. The supervisor or designee shall propose an alternate time in those instances where requested official time is denied.
- D. All employees are responsible for correctly recording and reporting any use of official time in the electronic time and attendance system (i.e. WebTA). The following are examples of codes and categories that should be used in completing their time and attendance:
  1. 35- Base/Negotiations/Reopen - ex. Negotiating a CBA
  2. 36- Base/Midterm Negotiations – ex. Negotiating provisions of a CBA, to include issues raised during the life of the agreement
  3. 37- Base/Labor-Management – ex. see Section 3.g.4. of this Article
  4. 38 – Base/Grievances/Appeals – ex. employee grievance brought on their own behalf
- E. Management will provide the Union with written notification whenever these codes and categories are updated/revised.

## **SECTION 5**

In the performance of their representational duties, Union Representatives shall obtain the permission of their supervisor(s) and the supervisor(s) of the employee(s) of the organization they intend to visit during duty hours. They will provide the supervisor of the employee being visited the specific action to be accomplished, when, where, and by what means prior to consulting with said employee.

- A. In the event that a Union meeting or other Union event such as a membership drive, is to be held in a management controlled facility, Union representatives must gain prior written approval to use the facilities to hold the meeting. Any on-duty bargaining unit employee must request and be granted leave in order to attend. An employee may not be in a duty status while attending these events. Official time will not be approved for these events.
- B. When Union Representatives are performing their official representational duties, the need for privacy may arise. In accordance with this Agreement, and upon request, management may provide appropriate space, if available, to meet this need. The granting of this space will not disrupt or otherwise impair the mission.

## **SECTION 6**

It is the Union's responsibility to ensure that all official time is used appropriately and tracked in accordance with this Article.

## **SECTION 7**

There shall be no restraint, interference, coercion or discrimination against any Union Representative because of the performance of their official representational duties.

## **SECTION 8**

Meetings with Management shall be pre-arranged between the parties. The Designated Management Representative may determine if attendance by other appropriate management officials will be necessary to fully address concerns raised by the Union, and request their participation in the discussion as they deem appropriate.

## **SECTION 9**

Non-unit representatives of the Union may be granted access to Government facilities upon request, if deemed necessary to conduct Union representational duties and otherwise approved by Management. Each request shall conform to all security requirements. All requests may be considered and accommodated if possible.

## **Article 7: Mid-Term Bargaining**

### **Section 1**

With the exception of changes mandated by law, rule, regulation, or by direction from higher authority; or changes flowing from the introduction of new technology; all matters covered by this Agreement will not be subject to change during the term of the agreement, absent mutual consent of the Parties. When because of mandated changes or the introduction of new technology, there is a need to reopen existing articles or add new articles the procedures in this article will be followed. The procedures in this article will also be used when there is a change in working conditions (non-mandated changes) when there is not a specific process included in another article. Neither the Union nor Management shall waive any statutory rights during this process.

In this regard, the Agency has the sole right to make changes in the exercise of its management rights pursuant to 5 U.S.C. §7106, or for any other reason associated with the accomplishment of its mission, However, the Agency does recognize its potential obligation, consistent with applicable laws, rules, and regulations, to notify the Union of such changes and to negotiate, upon request of the union, pursuant to 5 U.S.C. §7106(b) (2) and (3). These changes may be Agency-initiated and/or may result from implementation of future laws; Department-wide or Agency regulations, Department-wide or Agency directives, Department-wide or Agency policies; and government-wide regulations, as deemed necessary or appropriate by the Agency.

### **Section 2**

The negotiation of procedures and appropriate arrangements, pursuant to 5 U.S.C. §7106(b) (2) and (3), of changes will be conducted and/or facilitated by the Management Representative, (or designee) and the applicable Local President (or designee).

### **Section 3**

The procedures contained in this Section shall constitute the ground rules for all negotiations under this Article. Except for at the National level where the Parties may negotiate additional procedures upon mutual agreement to do so.

- A. Notification Procedure: In issuing, revising or canceling rules and regulations relating to personnel policy, practices, procedures and matters affecting working conditions, the Employer shall give due regard to the obligations imposed by applicable laws, rules, regulations, and this Agreement. Before making changes to bargaining unit employees' conditions of employment, or otherwise changing personnel policy, practices or working conditions, the Agency shall provide the Union with written notice of the proposed change(s). Such notice may be provided to the Union by mail, hand delivery, e-mail or facsimile (fax). All other correspondence under this Article shall be provided to the Union using similar means. The Union will provide the Agency with any response(s) in a similar

manner. The Union's response shall be signed by the appropriate official as provided in Section 2 of this Article. Specific procedures to be used pursuant to this Article are as follows:

1. The Agency will provide written notice to the Union of the Agency's intent to make a change(s) of bargaining unit members' conditions of employment (that are not otherwise covered by the parties agreement) once the Agency has made a final decision has been made to implement the proposed change(s).
2. The Union will have five (5) business days to advise the Agency, in writing, of the Union's intent to negotiate over procedures and appropriate arrangements regarding the change pursuant to 5 U.S.C. §7106. After that notice, the Union will then have five (5) additional business days to provide the Agency with proposals relating to the impact and implementation of the proposed change. The parties will then schedule a time to begin negotiating within seven (7) business days of the Agency's receipt of the Union's proposals.
3. The Union may request additional information regarding the proposed change(s) and/or to seek clarification of the reasons for the change outlined in the Agency's written notification during the course of negotiations. This information may be provided by documentary record or from a dialogue between the Agency and Union regarding the change(s).

**B. Bargaining Procedure.** Upon written notification and proposals being presented as discussed in section 3 above, the Agency and Union will bargain, as appropriate and in accordance with applicable law, rule and regulation, over procedures and appropriate arrangements for the change(s).

1. The Parties will use all available technology to negotiate, face to face bargaining will only be conducted upon mutual consent.
2. Agency will provide a site or Technology for negotiation
3. The Union will be authorized the same number of bargaining representatives on official time as the Agency has representatives participating in the negotiations. The Agency will not reimburse the Union or pay for travel expenses for Union officials attending mid-term bargaining sessions.
4. Either party may have a technical expert (TE) present as necessary who can provide information necessary for the successful completion of bargaining. Any TE for the Union may be granted appropriate official

time for participation in the bargaining sessions. The Agency will not reimburse or pay for travel expenses for the Union's TE.

5. Negotiations shall take place as soon as practicable, but no more than seven (7) business days after the Union has provided proposals, unless the parties mutually agree to extend the period. Bargaining will occur during regular duty hours, unless otherwise mutually agreed by the Parties. The Parties will endeavor to reach agreement and conclude bargaining within ten (10) business days from the start of negotiations, but that period may be extended by mutual agreement of the Parties. If the Agency determines the Union is not bargaining in good faith the Agency may implement the proposed change prior to the completion of bargaining. This determination may be challenged by the Union through the appropriate channels. Should the parties not come to agreement during the allotted negotiation period the Agency may implement the change if it determines it must do so. However, post implementation bargaining procedures pursuant to section (4) of this article will apply if the parties are unable to reach agreement prior to the implementation date declared by the Agency.
6. The Union may raise no additional proposals or subjects of bargaining after submission of its initial proposals except by mutual agreement, or under the post implementation bargaining procedure under Section D of this Article.

#### **Section 4**

##### **Post Implementation Bargaining**

- A. Definition: Post implementation bargaining is bargaining procedures and appropriate arrangements after a management-initiated change has been implemented. When the Agency 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. Bargaining Procedure: The Union will be afforded the opportunity to submit bargaining proposals concerning the change for up to twenty (20) business days following the date that implementation by the Agency has occurred. The Union shall not file unfair labor practice charges solely over implementation prior to completion of bargaining. However, the Union reserves all other rights pursuant to applicable laws and regulations. Once Union proposals have been submitted to the Agency, the procedures in section (d) above will apply.

## **Section 5**

Agreements negotiated pursuant to this article will be subject to Agency head review pursuant to 5 USC § 7114(c). In the event of disapproval at Agency head review, the Union will have the option of renegotiating the entire midterm matter. The option to renegotiate the entire midterm must be exercised by the Union by notice to the Employer within twenty-one (21) calendar days of notice of disapproval.

## **ARTICLE 8: ABSENCE AND LEAVE**

The parties agree that bargaining unit employees will follow the current Department of Commerce Leave policy subject to mission requirements and applicable law, government wide rules and regulations.

## **Article 9: Union Access to Employer Services**

### **Section 1**

- A. The Employer agrees that, where available, the Union may have access to the use of Video Teleconferencing and Computer Training Rooms for Union Sponsored Training, as approved by the Employer. The Union will have the same access as other groups.
- B. The Union shall be responsible for furnishing its own equipment (laptops, mobile devices, printers, etc.) as to relieve any burden of audit accountability and internal security requirements by the Department. The Union will be provided internet access by the Agency, where available.

### **Section 2**

- A. At the sole discretion of the Employer and with prior approval from the Employer, Union representatives shall be permitted reasonable use of public hardline telephones provided by the Employer along with the Agency's internal physical mail system when necessary for conducting labor-management activities not inclusive of internal union business. Consistent with the postal and Agency regulations, the Union shall have use of Employer metered mail limited to labor relations representational matters but not including matters relating to internal Union business. This, however, does not permit the Union representative to use other types of mailing such as express, overnight, registered, certified mail, etc. Management has the right to cancel or deny at any time the use described in this section.
- B. Official publications of the Union, which may include newsletters, fliers or other notices, may be distributed, with prior approval by the Employer, Employer property by Union representatives during non-duty time.
- C. Where available, the Employer agrees to provide the Union physical space for official Union materials on public bulletin boards. Prior to posting, all such union materials must be approved by the Management Representative or designee, and will be limited to the designated space and shall be properly identified as official Union issuances.
- D. The Union is responsible for the content of all Union materials posted or distributed.
  - 1. Union posting will be maintained in an orderly condition.
  - 2. Posted material shall be pertinent to the conduct of workplace business and not related to partisan political matters.

3. Posted and distributed Union materials shall not malign or negatively refer to specific managers or individuals.

## **ARTICLE 10: ADVERSE AND DISCIPLINARY ACTIONS**

### **SECTION 1: POLICY**

The Employer shall determine when the need arises for disciplinary or adverse actions. 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.

### **SECTION 2: PENALTY DETERMINATION**

- A. 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 as determined by governing law.
- B. The Parties recognize that discipline may be progressive in nature, however the progressive sequence of discipline is not required. It is understood, however, that progressive discipline need not follow any specific sequence of disciplinary actions and that some offenses may be cause for severe action, including removal, irrespective of whether previous disciplinary or adverse actions have been taken against the offending Employee.

### **SECTION 3: ADMONISHMENTS/COUNSELING**

Admonishments and counseling are not formal disciplinary actions to which the procedures in this Article apply. Admonishments and counseling, 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 counseling are neither grievable nor appealable.

### **SECTION 4: DISCIPLINARY ACTIONS**

For the purpose of this Agreement, disciplinary actions are defined as written reprimands and suspensions of 14 calendar days or less.

- A. Reprimands

A reprimand is a written letter to an Employee based on unacceptable conduct or poor performance. 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 three years, but may be removed by the

Employer, at its sole discretion, anytime within the three-year period. A reprimand shall inform the Employee of his/her appeal/grievance rights as required by law.

B. Suspensions of 14 calendar days or less

An Employee against whom a suspension of 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;
2. Not less than 24 hours, but no more than 7 days, to respond orally and/or in writing and to furnish affidavits and other documentary evidence in support of their response. The deciding official may extend the reply period if he/she determines that good cause exists for an extension based on extenuating circumstances. The Employer will designate an official to hear the Employee's oral response who has the authority to make a final decision on the proposed adverse action. The right to answer orally in person does not include the right to a formal hearing with examination of witnesses;
3. Be represented by an attorney or other representative; and
4. A written decision at the earliest practicable date, containing the specific reasons for the decision and notifying the Employee of his/her appeal rights.

## **SECTION 5: ADVERSE ACTIONS**

For the purpose of this agreement, adverse actions are defined as suspensions of more than 14 days, reductions-in-grade or pay, removals, furloughs will be governed by applicable laws, rules, and regulations.

An Employee against whom an adverse action is proposed is entitled to:

- A. Thirty calendar days advance written notice of the proposed action, which specifies the nature of the proposed action and informs the Employee of his/her rights to review the material that was relied upon in proposing the suspension. If there is reasonable cause to believe that the Employee has committed a crime for which a sentence of imprisonment may be imposed, the proposed action may be effected less than 30 calendar days from the receipt of the advance written notice;

- B. Seven calendar days to respond orally and/or in writing and to furnish affidavits and other documentary evidence in support of their response. The deciding official may extend the reply period if he/she determines that good cause exists for an extension based on extenuating circumstances. The Employer will designate an official to hear the Employee's oral answer who has authority to make a final decision on the proposed adverse action.
- C. Be represented by an attorney or other representative; and
- D. A written decision at the earliest practicable date, containing the specific reasons for the decision and informing the Employee of his/her appeal rights.

#### **SECTION 6: NOTICE AND INVESTIGATIVE LEAVE**

- A. Pursuant to 5 U.S.C. § 6329(b), the Employer may place an Employee on Investigative and/or Notice 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). These two types of 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 of damage to Government property; or
  - 4. Otherwise jeopardize legitimate Government interests.
- B. Before using either Investigative or Notice leave, the Employer will consider options to avoid or minimize the use of paid leave, such as assigning the Employee to duties in which the Employee no longer poses a threat; allowing the Employee to take another form of eligible leave; carrying the Employee in absent without leave (AWOL) status, if the Employee is absent from duty without approved leave; and curtailing the notice period for an Employee if there is reasonable cause to believe the Employee has committed a crime for which a sentence of imprisonment may be imposed.
- C. The use of Notice and Investigative Leave is subject to the time limitations and special approvals for extensions pursuant to 5 U.S.C. § 6329(b).

- D. Nothing in this section shall be construed to impose additional requirements on the agency not specifically outlined in applicable statutes, regulations, and local policy.

## **SECTION 7: ALTERNATIVE DISCIPLINE PLAN**

Recognizing that traditional forms of discipline are time consuming, costly to both parties, and frequently result in bad feelings, the parties agree to the following.

Alternative Discipline Plan:

- A. Use of alternative discipline will be decided by consensus of the supervisor and the employee. It may be used in lieu of traditional discipline for any offense for which the proposed disciplinary action would be a suspension of fourteen working days or less. Alternative discipline may be chosen for a specific offense only, and permits the employee to take the initiative in requesting alternative discipline and in determining the penalty. It is not to be viewed as a continuing obligation should an offense occur in the future.
- B. The employee may accept or reject the option of alternative discipline. If the employee and the supervisor cannot agree on alternative discipline, traditional discipline may be undertaken by the supervisor, with the employee retaining all of the traditional avenues of challenge. The employee, a member of a recognized bargaining unit, is entitled to union representation during this process.
  - 1. In order to enter into alternative discipline, the employee and the supervisor must sign an agreement which includes, as a minimum, the following:
    - a. The employee acknowledges that the supervisor believes sufficient cause exists to take disciplinary action. This acknowledgement is not an admission of guilt on the part of the employee.
    - b. The employee agrees to abide by and complete the action required in the Alternative Discipline Agreement – determined by consensus – and to refrain from future similar misconduct.
    - c. The supervisor will identify the traditional discipline that the supervisor would have deemed appropriate, had the employee not agreed to the alternative discipline.

- d. The employee agrees that the traditional discipline identified may be imposed if the employee fails to comply with and complete the terms of the Alternative Discipline Agreement. If the employee is unable to complete the Agreement due to circumstances beyond the employee's control, an alternative accommodation will be negotiated.
- e. The employee agrees that if he fails to comply with or complete the terms of a disciplinary agreement, whether alternative or traditional discipline was used, that the current offense may be considered as a previous offense for a specific period of time, in the event of future misconduct.
- f. The employee agrees not to grieve the alternative disciplinary action. Additionally, the employee acknowledges that failure to complete the Alternative Discipline Agreement invokes traditional discipline, and that a further consequence of this failure is that the employee waives the opportunity of further due process and grievance for this offense. The employee may, however, grieve the decision that the Agreement was not completed.
- g. The supervisor agrees that if no further misconduct occurs, documentation of the alternative discipline will be removed from the employee's record after a specific period of time negotiated between the employee and the supervisor (not longer than three years).

The above items must be included in an Alternative Discipline Agreement. However, the supervisor and the employee may negotiate and agree to other conditions, such as participation in the Employee Assistance Program. These additional conditions must also be included in the Agreement.

The Department's Standard Table of Penalties and Offenses contained in DAO 202-751 will continue to be used as a guide to the types of traditional discipline that would have been otherwise proposed. Alternative discipline will be determined by consensus between the employee and the supervisor. If consensus cannot be reached, the action will revert to the traditional method.

## **ARTICLE 11: ALTERNATIVE WORK SCHEDULE (AWS)**

### **Section 1**

The parties agree that bargaining unit employees will follow the current Department of Commerce Alternative Work Schedule policy subject to mission requirements and applicable law, government wide rules and regulations.

<https://www.commerce.gov/hr/practitioners/leave-policies/hours-of-duty-and-work-schedules>

### **Section 2**

Overtime will be in accordance with the latest Department of Commerce policy subject;

<https://www.commerce.gov/hr/practitioners/compensation-policies/premium-pay/overtime-standards>

## **ARTICLE 12. POSITION DESCRIPTIONS AND CLASSIFICATION**

### **SECTION 1**

Position descriptions will be kept current and will be based upon the principal duties and responsibilities assigned to each position. All identical positions within the same organization unit will normally be covered by the same position description. Any changes in the position description will be discussed with the employee by the Employer. In cases where more than one employee is affected, the discussion may be held with a group of employees. Employees will be furnished a copy of the changed position description as soon as administratively possible and/ or will be advised to make pen and ink changes to their copy of the position description.

### **SECTION 2**

Any unit employee who feels his position is improperly classified must first consult with his supervisor for clarification. Should the supervisor be unable to resolve the employee's questions, the employee may request a meeting with the Human Resources Advisor and his supervisor to discuss the basis for the classification of the position. At the employee's request, a Union Representative may attend. Should this fail to resolve the employee's questions, the employee will be advised that he may file a classification appeal under appropriate regulations.

### **SECTION 3**

If the employee wishes to file a classification appeal, he may consult with the Human Resources Division.

## **ARTICLE 13. EQUAL EMPLOYMENT OPPORTUNITY**

### **Section 1**

The Union and The Employer agree to cooperate in providing equal employment opportunity for all qualified applicants and employees and to prohibit discrimination against any employee or applicant because of race, religion, color, sex, age, or national origin and to promote the Employer's programs for equal opportunity through a positive and continuing effort.

### **Section 2**

The Employer agrees to submit to the Union, on written request, copies of existing statistical employment information within recognized units by minority group designation and sex. This information must be consistent with EEO, Freedom of Information, and Privacy Act requirements and implementing regulations.

### **Section 3**

The Employer shall adhere to the policy of nondiscrimination in approving training.

### **Section 4**

The Union may represent any unit employee, upon written request of the employee, at any stage of an EEO complaint. The Union will not be authorized official time for representation purposes of an EEO complaint.

### **Section 5**

The Employer and the union will endeavor to eradicate all forms of discrimination covered under EEO guidelines as applicable to personnel policies, practices, and working conditions.

### **Section 6**

The Employer will endeavor to utilize to the fullest extent the present skills of employees by all reasonable means, to provide the opportunity for employees to enhance their skills through on-the-job training, work-study programs, and other training measures so that they may perform in their jobs at their highest potential and advance in accordance with their abilities.

## **ARTICLE 14: NEW EMPLOYEES**

### **Section 1**

Upon request by The Union, The Employer will provide the Union a listing of unit employees at least once per year.

### **Section 2.**

The Union assumes the responsibility for providing new employees a copy of the Collective Bargaining Agreement. The Employer will allow no more than fifteen (15) minutes for this task. (If there is more than one new employee in the immediate organizational unit, the Union will provide copies to the employees in a group, to the extent possible.)

## **ARTICLE 15: CONTRACTING OUT**

### **Section 1**

The Employer will give the Union written notice of its intention to "contract out" any part of the work without a cost comparison study as far in advance as possible when the level of contracting out is likely to result in a reduction of the bargaining unit work force.

### **Section 2**

The Employer agrees to advise the Union at least thirty (30) days in advance, when feasible, of an A-76 study and to keep the Union and affected bargaining unit members informed at least on a quarterly basis of progress on any review of a function within a bargaining unit which is conducted under provisions of OMB Circular A-76. The Union will be provided the opportunity to attend any formal meeting with bargaining unit members concerning contracting out.

### **Section 3**

If bargaining unit employees are displaced due to a contracting out decision, The Employer will seek to minimize the impact on such employees by exploring placement opportunities to supplement reduction-in-force procedures and mandatory offers from the contractor.

### **Section 4**

The Employer will provide necessary training to career employees who are reassigned, as a result of contracting out, to positions for which they are not fully qualified.

### **Section 5**

Upon announcing, and during the course of, an A-76 study within a bargaining unit, The Employer will provide the Union with appropriate non-confidential material, as it becomes available, such as: notice that a study is to be initiated, schedules or "milestone" charts, invitation for bid (IFB) or request for proposal (RFP), performance work statements (PWS), and applicable locality wage rates provided by the Department of Labor; plus other pertinent, no restricted information upon request by the union.

## **Section 6**

The Employer will provide the opportunity for a Union representative to be present during the "walk-through" by bidder on any function undergoing an A-76 cost comparison study.

## **Section 7**

The Employer and the Union recognize the "right of first refusal" which provides that the contractor will grant those Federal employees displaced by direct result of contract the right of first refusal of employment openings created by the contractor. This applies only to job openings for which such displaced employees are qualified, and does not apply when such employees would otherwise be prohibited from such employment by the Government post-employment conflict of interest standards. Refusing the right of first refusal because of displacement due to contracting out shall not deny a unit employee of any rights he might otherwise have under applicable RIF procedures; however, such refusal may, in accordance with applicable law and regulation, affect the employee's entitlement to severance pay.

## **Section 8**

Any dispute which could otherwise serve to delay or overturn a contracting out decision is not subject to the negotiated grievance and arbitration procedure unless determined to be so by the U.S. Supreme Court.

## **ARTICLE 16: HEALTH AND SAFETY**

### **Section 1**

The Employer affirms its obligation to provide safe and healthful workplaces and conditions, and to follow operating practices that will safeguard all employees and result in safe working conditions and efficient operation. The Union safety representative may alert the Employer to safety hazards and, if they are not corrected to the Union's satisfaction, may request a meeting with the Safety Officer to pursue the issues. Responsibility for determining what constitutes a safety hazard and what corrective action is necessary shall remain with the Safety Officer.

### **Section 2**

In order to help ensure safe working conditions, the Union safety representative and a representative of the Employer may together investigate circumstances of accidents involving one full lost workday or medical expenses not paid by the government or where it could result in disciplinary or adverse action taken against a bargaining unit member.

### **Section 3**

When requested by the Union, and upon approval of the employee involved, a copy of the accident report shall be provided to the Union.

## **ARTICLE 17: FITNESS FOR DUTY EXAMINATIONS**

### **Section 1**

The Parties agree that, in the interest of efficiency of the service, employees must be physically able to perform the duties of their positions. Accordingly, the Union recognizes and affirms the Employer's right, in accordance with applicable statutes, to order employees to submit to fitness duty examinations.

### **SECTION 2**

In the event an employee is found to be physically unable to perform the duties of his position, the Supervisor will consult with the Human-Resources Division for guidance in seeking reasonable accommodation.

## **ARTICLE 18: AWARDS**

At the request of The Union, The Employer agrees to provide the Union the names of bargaining unit members who receive time-off awards, and/or monetary performance awards, including quality step increases.

## **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 grievances as defined in 5 USC 7103 (a) (9), over the application or interpretation of this agreement and other dissatisfactions. Unless otherwise provided for, this procedure will be the sole procedure available to the Union, The Employer, or bargaining unit employees for resolving grievances. Excluded from this negotiated grievance procedure are the following:

- A. Matters for which a statutory appeal procedure is established, except for removal or suspensions of more than fourteen days;
- B. Any matter which is subject to final administrative review outside of the Department of Commerce;
- C. Termination of probationary or temporary employees;
- D. Non-selection for promotion from a group of properly ranked and certified candidates;
- E. A notice of proposed action, preliminary warning;
- F. Suitability determination;
- G. Non-adoption of a suggestion;
- H. Approval or Disapproval of incentive award, bonus, or retention Allowance;
- I. Contents of employee performance plan or performance improvement plan;
- J. Matters not within the control or discretion of the Employer;
- K. Any issue for which there would be no tangible personal relief to the grievant or for which action is sought against another person; and,
- L. Matters excluded by law or government wide rule or regulation.
- M. A return of an employee from non-bargaining unit position as a supervisor or manager to a bargaining unit position;
- N. Any claimed violation of Subchapter III of Chapter 71 of Title 5 U.S.C. as amended relating to prohibited political activities (i.e., Hatch Act violation);
- O. Retirement, life insurance, or health insurance;
- P. A fitness for duty decision which does not result in an action against the employee;
- Q. An action which terminates a detail or temporary or term promotion by its own terms;
- R. The content of any Agency policy or regulation;
- S. A suspension or removal for national security reasons;
- T. Decisions to remove, suspend for greater than 14 days, or reduce in grade, any employee from Federal service for misconduct or unacceptable performance;
- U. The assignment of a performance rating of record

## **Section 2**

Grievances which question directly or indirectly interpretation of higher authority regulations will not proceed to arbitration without clarification by the responsible agency office. This clarification will be binding on the arbitrator. The arbitrator shall decide the merits of the grievance considering this clarification.

## **Section 3**

Questions as to whether or not a grievance is on a matter subject to the grievance or arbitration procedure may be referred by either party to arbitration in accordance with Article 20, Arbitration.

## **Section 4**

Only a Union designated representative may represent an employee who files a grievance under this agreement. However, a unit employee may present a grievance without the intervention of the Union.

## **Section 5**

Most grievances arise from misunderstanding or disputes which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level. The Employer and the Union agree that a concerted effort will be made by The Employer and the aggrieved party(s) to settle grievances at the lowest possible level. In as much as dissatisfactions and disagreements arise occasionally among people in any work situation, the parties agree to attempt to resolve complaints informally. However, if informal attempts are unsuccessful, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's or supervisors good standing, his performance, or his loyalty or desirability to the organization. If a grievant(s) is not represented by the Union, The Employer will assure the right of the Union to have an observer present at any discussion with the grievant(s) concerning an adjustment or resolution of the grievance.

## **Section 6: Formal Procedures**

### **A. Step 1**

1. The grievance shall be presented within thirty (30) calendar days from the date the grievant(s) became aware, or was notified, of the action or condition giving rise to the grievance. The grievance shall be submitted to the first line supervisor in writing and shall contain, to the extent possible, the following:
  - a. Name of the grievant(s),

- b. Designation of Union as the representative or statement of self-representation
  - c. Identification of Article(s) and Section(s) of the Negotiated Agreement, applicable law or regulation, and/or established past practice alleged to have been violated,
  - d. Details of the grievance,
  - e. The corrective action sought,
  - f. Memo(s) describing attempts at informal resolution,
  - g. Signature of the grievant(s), and,
  - h. Signature of the Union representative (if applicable) and date of submission.
2. The First line supervisor shall, within fourteen (14) days, provide a written decision to the grievant, with a copy to the grievant's representative (if any).
- a. If the grievance arises out of a decision by a Management official on a proposed adverse action to which the employee had an opportunity to reply, the grievance will be presented in writing at the next higher step of the grievance procedure, which would result in a review by a Management official at a higher level than the original deciding official.

**B. Step 2** If the grievance is not settled with the first line supervisor, the grievant(s) and/or designated Union representative may, within five (5) days, forward the grievance, in writing, to the next level supervisor for further consideration. The grievance shall include:

- 1. Memoranda of informal and step I proceedings and decision memorandum,
- 2. Rebuttal by grievant and,
- 3. If desired, request for a meeting to discuss the grievance.

The Director, MASC, or his representative, will provide a written response to the grievant, with a copy to the grievant's representative, if any, within twenty (20) days of receipt of the grievance.

## **Section 7**

If the grievance is not satisfactorily settled at the next level supervisor the Union may refer the matter to arbitration in accordance with Article 20 of this agreement.

## **Section 8**

All time limits in this Article may be extended by mutual consent, and extensions will not unreasonably be refused. Failure of the grieving party to advance a grievance to the next step shall result in cancellations of the grievance. Failure of the responding party to observe the time

limits on responding to a grievance shall result in the grieving party notifying the responding party, in writing, of a three day period in which to respond. Failure of the responding party to respond shall result in default by the responding party. The relief requested, if legal and reasonable, will be granted. If, after negotiation, the parties are unable to agree that the relief is reasonable, the Parties will utilize the services of the Federal Mediation and Conciliation Service to attempt to mediate the grievance prior to advancing the grievance to arbitration.

### **Section 9**

Union grievances over the interpretation or application of this Agreement may be submitted in writing by the Local President (or designee) directly to the Management Representative.

### **Section 10**

Management grievances over the interpretation or application of this Agreement may be submitted in writing by the Director, MASC, (or designee) directly to the Local President.

## **ARTICLE 20: ARBITRATION**

### **Section 1**

If The Employer and the Union fail to settle any grievance processed under the negotiated grievance procedure, such grievance, upon written request by either party to the other within thirty (30) calendar days after issuance of the responding party's final decision, or expiration of the response time, may be submitted to arbitration. The expedited arbitration procedure may be invoked only by mutual agreement of the parties.

### **Section 2**

Within five (5) workdays from the date of the request for arbitration, the parties shall jointly request the Federal Mediation and Conciliation Service to provide a list of seven (7) arbitrators from which to select an individual to decide the issue. The parties shall meet within three (3) working days after the receipt of such list to make their selection. If they cannot mutually agree upon a selection, The Employer and the Union will each strike, alternately, one name at a time until only one remains. The Union shall have the first strike. The remaining person shall be the duly selected arbitrator.

### **Section 3**

If for any reason The Employer or the Union refuses to participate in the selection of an arbitrator, the Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an arbitrator to hear the case.

### **Section 4**

If the parties fail to agree on a joint submission of the issue for arbitration, each shall submit a separate submission, and the arbitrator shall determine the issue or issues to be heard.

### **Section 5**

The arbitrator's fee, other arbitrator's expenses, and cost of the hearing transcript, if any, shall be borne by the losing party. In the event of a split award, cost will be equally shared. The arbitration hearing will be held, if possible, on the Employer premises during the regular day shift hours of the basic workweek. All employee participants in the hearing shall be in a duty status if they otherwise would have been in a duty status. No other costs or fees of any kind will be assessed against The Employer in an arbitration case.

**Section 6**

The arbitrator will be requested to render the decision as quickly as possible, in any event not later than (30) days after the conclusion of the hearing unless the parties mutually agree, in writing, to grant an extension of the time limit.

**Section 7**

The arbitrator's award shall be binding on the parties. However, either party may file an exception to an award, when made under regular arbitration procedures, with the Federal Labor Relations Authority under regulation prescribed by the Authority.

## **ARTICLE 21: DUES WITHHOLDING**

### **Section 1**

The provisions of this Article are for the purpose of permitting eligible employees who are members of the Union to pay dues through the authorization of voluntary allotments from their pay. These provisions cover all eligible employees:

- A. Who are members in good standing in the Union;
- B. Who voluntarily complete Standard Form 1187, Request and Authorization for Voluntary Allotment of Compensation for payment of Employee Organization Dues;
- C. Who receive compensation sufficient to cover the total amount of the allotment; and
- D. Who are in the bargaining unit included in this agreement.

The parties agree that these provisions are subject to, and will be governed by, applicable Federal laws, rules and regulations issued by the Office of Personnel Management and Federal Labor Relations Authority and by directives of the Department of Commerce and its payroll agent, and will be modified by any future amendments thereto.

### **Section 2**

The Union is responsible for:

- A. Informing its members on the voluntary nature of the system for the allotment of employee organization dues including the Union's freedom to change the amount of the dues (and thus the allotment) and the time and conditions under which the allotment may be revoked (i.e., beginning of the first pay period after March 1 each year provided allotment has been in force at least one full year) and insuring that such information is properly stated on any Standard Form 1187 submitted for dues withholding;
- B. Permitting the Employer to inform all current Union members in writing of the new effective date of dues allotment revocations;
- C. Purchasing and distributing to its members Standard Form 1187;
- D. Notifying the Employee Relations/Labor Relations (ER/LR) Specialist in writing, of:
  - 1. Current authorized names and titles of officials who will make the necessary certification of Standard Form 1187 in accordance with this Agreement.
  - 2. Any change in the amount of dues to be deducted.
  - 3. Any employee who is no longer in good standing within ten (10) calendar days of the date of such determination.
- E. Forwarding properly executed and certified Standard Form 1187 to the ER/LR Specialist on a timely basis;
  - 1. Promptly forwarding an employee's revocation (memorandum or Standard Form 1188, Revocation of Voluntary Authorization for Allotment of Compensation for

Payment of Employee Organization Dues) to the Assigned ER/LR Specialist when such revocation is submitted to the Union so ER/LR Specialist can send form to Enterprise Services for processing; and

2. Keeping the ER/LR Specialist informed of the name, title and address of the allottee to whom remittance should be sent. Until further notice this will be:

AFGE Local 2186  
Box 1002  
Boulder, CO 80306

3. Keeping the ER/LR Specialist informed of the allottee to whom checks shall be payable. Until further notice this will be:

AFGE Local 2186

### **Section 3**

The Employer is responsible for:

- a. Permitting and processing voluntary allotment of dues in accordance with this Agreement when in receipt of a properly completed Standard Form 1187 which meets the criteria in Section 2.a of this Article.
- b. Withholding dues on a biweekly basis;
- c. Notifying the Union when an employee is not eligible for an allotment;
- d. Withholding new amounts of dues upon certification from the authorized Union official;
- e. Transmitting remittance checks to the allottee designated by the Union, together with a listing of employees for who deductions were made;
- f. Forwarding, as a separate submission each pay period, a copy of all revocation notices received by the ER/LR Specialist to the allottee designated by the Union; and
- g. Providing the following information on the remittance listing:
  - (1) The name of each employee for whom the deduction has been authorized to be made during the current pay period; and
  - (2) For each employee or group of employees the following information will be given to the extent applicable:
    - (a) Amount withheld; or
    - (b) No deduction because employee's compensation is insufficient to permit a deduction.

### **Section 4**

- a. The amount of the dues to be deducted as allotments from compensation may not be changed more frequently than once each twelve (12) months.
- b. Dues withholding provisions are applicable to an employee only so long as he remains in a unit recognized under this Agreement.

- c. Administrative errors in remittance checks will be corrected and adjusted in subsequent remittance checks to be issued to the employee organization. If the Union is not entitled to a subsequent remittance check after discovery of an error, the Union agrees to promptly refund any erroneous remittance.

## **Section 5**

The ER/LR Specialist will be responsible for coordinating the action described under this Article prior to payroll processing. The effective dates for actions under this Article are as follows:

- a. Starting dues withholding shall be the first pay period after date of receipt of properly executed and certified Standard Form 1187 by the ER/LR Specialist; no more than once every twelve (12) months per employee. An employee must remain on payroll deductions for one year after commencement of dues withholding before a voluntary revocation request will be processed.
- b. Changes in amount of dues shall be the first pay period after receipt of certification by the ER/LR Specialist unless a later date is specified by the Union.
- c. Revocation by an employee of dues withholding may be made by use of Standard Form 1188 or by memorandum after withholding has been in effect for at least one year. After the expiration of a one-year period during which an assignment may not be revoked, an employee may initiate the revocation of a previously authorized assignment at any time that the employee chooses.
- d. Termination due to loss of membership in good standing shall be effective the first pay period after date of receipt of notification by the, ER/LR Specialist

## **Article 22: Actions Based on Unacceptable Performance**

### **Section 1**

- A. This Article is applicable to all members of the bargaining unit who have completed a probationary or trial period. The Employer has the sole discretion to determine if an employee's unacceptable performance shall be addressed through the procedures identified in 5 C.F.R. 432 or 5 C.F.R. 752. The Article is only related to actions initiated under 5 C.F.R. 432.
- B. No employee will have an action under 5 C.F.R. 432, proposed against him or her that relies on a critical element under which he or she has not been working for at least the minimum appraisal period, sixty (60) days or where performance expectations have not been communicated to the employee to the employee consistent with the requirements of law and terms of this Agreement.

### **Section 2**

Management has sole discretion to determine performance expectations and what constitutes acceptable and unacceptable performance, with respect to each of the specific job elements of the employee's performance plan. Unacceptable performance is defined as performance by an employee that fails to meet one or more critical job elements of his/her performance plan.

### **Section 3**

- A. When an employee's performance becomes unacceptable in one or more critical elements, the employee will be provided an opportunity to demonstrate acceptable performance (ODAP) in the critical element(s) at issue. The ODAP notice will comply with law, regulation and applicable policy.
- B. Except in rare circumstances, Employees are expected to demonstrate acceptable performance within 30 days after issuance of an ODAP notice.
- C. A grievance may not be filed on either the substance or procedural aspects of this ODAP notice until a final decision is issued.

### **Section 4**

- A. An employee whose reduction in grade or removal is proposed under this Article is entitled to advance written notice of the proposed action in accordance with law, regulation and any applicable policy.

- B. Proposed removal notices must include specification of the critical element(s) failed, instances of failure that occurred during the ODAP Period, and a recitation of the employee's rights. Documentation to support the instances of failure, along with the employee's performance plan, must be attached to the notice.

## Section 5

- A. The Employee, or his/her designee, will notify the Employer within five (5) days of receipt of the notice of proposed action that the Employee intends to deliver an oral or written reply, or both. An employee will be given ten (10) days from the date s/he receives the notice of proposed action to deliver an oral and/or written reply. Reasonable requests for extensions will be granted. The Employer, at his/her discretion, may grant additional time on a case by case basis.
- B. An employee must inform the deciding official, in writing, if s/he is represented and provide the appropriate contact information for the representative.
- C. Oral reply meetings where the employee and the deciding official are within the same commuting area may be conducted in person at the Employer's location or remotely (e.g., tele-conference, web-conference, video-conference), at the discretion of the Employer. Where the employee and deciding official are not in the same commuting area, the meeting will be conducted remotely (e.g., tele-conference, web-conference, video-conference), absent mutual agreement otherwise.
- D. The employee representative will participate either in person or remotely, at the choice of the employee. However, the Employer will bear no costs associated with this travel.
- E. The term "days" is defined according to 5 C.F.R. 210.102.

## Section 6

- A. An employee may challenge a removal or demotion decision under this Article in only one of the following ways:
  - 1. By filing an appeal with the MSPB in accordance with applicable law and regulations;
  - 2. By filing a formal complaint of discrimination filed under the administrative EEO process.
- B. The final decision letter issued to the employee will contain a statement of his or her right to challenge the action in one of these (2) ways. Once an employee has elected

one of these procedures, the employee may not change thereafter to a different procedure.

## **Section 7**

The employer has the right to carry an Employee in a paid non-work status until a decision is implemented relative to the proposal, provided that the paid non-work status is consistent with law, rule or regulation.

## **Article 23: Telework**

The parties agree that bargaining unit employees may telework consistent with the agency's latest telework policy subject to mission requirements and applicable law, government wide rules and regulations.