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## **DEDICATION**

This contract is dedicated to Deborah Stolk, whose affable personality, clinical insight, quiet determination, and unfailing generosity contributed to this successful negotiation.

Thank you, Deb, for being with us on this journey.

## **PREAMBLE AND PURPOSE**

In accordance with Chapter 71 of Title 5 of the U.S. Code, and subject to all applicable statutes with regulations, the following articles constitute an agreement by and between the Department of Veterans Affairs (Department) and the National Association of Government Employees (NAGE or Union), an affiliate of the Service Employees International Union (SEIU). The Department and the Union are jointly referred to as the "Parties."

The Department and the Union agree that a constructive and cooperative working relationship is essential to achieving the Department's mission and to ensuring a quality work environment. This relationship must be built upon a solid foundation of trust, mutual respect, and a shared responsibility for organizational success.

The Parties agree that the development and implementation of modern and progressive work methods can facilitate and improve employee performance and the efficient accomplishment of the Department's mission.

The Parties strongly encourage open communication that facilitates collaborative recommendations, cooperation and mutual respect. Using pre-decisional involvement, partnership principles and labor-management forums can assist the Parties in creating a mutually beneficial collaborative relationship. Effective labor-management collaboration allows both employees and the Union to be given the opportunity to stay informed and help shape decisions in the workplace.

Consistent with law, rule and regulation, the purpose of this Agreement is to identify and provide a contractual framework of the rights and responsibilities of the Parties and employees about personnel policies, practices and procedures affecting conditions of employment.

Each party to this Agreement has a responsibility to consider the other party's concerns and to make an honest attempt to find acceptable solutions. The Parties shall foster an atmosphere of cooperation and mutual respect in all of their relationships and conduct their negotiations with dignity and decorum.

The Parties emphasize the importance of meeting at reasonable times to discuss topics contained in this Agreement, at the earliest time practicable, in order to resolve differences at the lowest possible level.

Any party who exercises any right under the Federal Service Labor-Management Relations Statute (the Statute) or contractual right pursuant to this Agreement shall not be subjected to reprisal or retaliation and shall be treated in a fair and equitable manner. The Parties agree that employee productivity and the efficient operation of the Department are improved when employee morale is high. As such, management, union officials and employees will treat each other with respect and dignity.

## **ARTICLE 1 – RECOGNITION AND COVERAGE**

### **Section 1 – Exclusive Representative**

- A. In accordance with 5 USC Chapter 71, NAGE is recognized as the sole and exclusive representative for all certified employees in units consolidated and certified by the Federal Labor Relations Authority (FLRA) on Certificate Number 22-07730 (UC) and any successor certificates, which may include non-professional and professional employees, full-time, part-time, temporary, term, Temporary Appointment Pending Establishment of a Register (TAPER) and intermittent employees who are hired as temporary not to exceed 1 year with an initial appointment period that exceeds 120 days, as appropriate.
- B. The Parties agree that should NAGE request the FLRA to include subsequently organized employees in the consolidated unit, the Department shall not oppose such a request or petition if the unit would otherwise be considered an appropriate unit under the law. However, the Department retains its right to challenge specific inclusions and exclusions as appropriate. Upon certification by the FLRA, such groupings automatically are covered by this Agreement.

### **Section 2 – Unit Clarification**

- A. In the spirit of cooperative labor-management relations, prior to making a bargaining unit status determination for NAGE bargaining unit(s) either as to an employee or position, whether at existing units, new units, and Community Based Outpatient Clinics (CBOC) or similar satellite office, or any other newly created entities, the Department will discuss the unit status with NAGE National or the affected NAGE local as appropriate. If still unresolved, either party may file a petition with the FLRA. If the position previously was included within the bargaining unit and covered under the FLRA certification, the employee and the position will remain in the bargaining unit until the FLRA issues a decision on the petition. In the event that the Department, by or through its agents, unilaterally removes a position or employee from the NAGE bargaining unit(s) and the FLRA subsequently determines that the position is properly included in the bargaining unit, the Department shall reimburse to the Union any and all union dues not deducted to the extent legally authorized, by law. Reimbursement for dues deduction will only apply to those employees who have an effective SF-1187 (or equivalent) on file in accordance with Article 55, Dues Withholding.
- B. Consistent with FLRA regulations, the Parties will provide appropriate notice of clarification and/or changes to the composition of the bargaining unit.
- C. Upon request, the Department will discuss and review the accuracy of the NAGE bargaining unit certifications with NAGE National or the appropriate local.

### **Section 3 – Employee Representation**

In accordance with the Statute and any government-wide regulations, the Department recognizes the right of NAGE to represent all employees in the NAGE bargaining unit.

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

### **Section 1 – Relationship to Laws and Regulations**

In the administration of all matters covered by this Agreement, officials and employees shall be governed by applicable Federal Statutes. They will also be governed by government-wide regulations in existence at the time this Agreement was approved.

### **Section 2 – Department Regulations**

Where any Department regulation conflicts with this Agreement, or other negotiated Agreement(s), the Agreement(s) shall govern.

### **Section 3 – Collective Bargaining with Title 38 Employees**

Under 38 USC 7422, collective bargaining by employees appointed under Title 38, Chapter 74, may not “cover or have any applicability to, any matter or question concerning or arising out of (1) professional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of compensation” under Title 38. The term “professional conduct or competence” is defined as (1) direct patient care or (2) clinical competence. By law, these areas are excluded from collective bargaining and governed entirely by VA regulations. The parties intend that all Articles in this Agreement should be interpreted consistently with 38 USC 7422, regardless of whether the Statute is or is not specifically cited in the Article.

## **ARTICLE 3 – AFFILIATIONS**

- A. The Department will honor the Union’s rights as the exclusive representative regardless of any relationships between the Department and an affiliate body.
- B. The Department agrees that officials of an affiliate body acting in a supervisory capacity over bargaining unit employees shall be bound by applicable law, regulation, the terms of this Agreement and any other applicable negotiated agreements in their supervisory relationships with bargaining unit employees.

## **ARTICLE 4 – MANAGEMENT RIGHTS**

### **Section 1**

In accordance with 5 USC 7106, nothing in this Agreement shall affect the authority of any management official of the Department:

- A. to determine the mission, budget, organization, number of employees, and internal security practices of the Department and;
- B. in accordance with applicable laws:
  - 1. to hire, assign, direct, layoff, and retain employees in the Department, 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 Department 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 Department's mission during emergencies.

**Section 2**

Nothing in 5 USC 7106 shall preclude the Department and the Union from negotiating:

- A. at the election of the Department, 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 officials of the Department will observe in exercising any authority under 5 USC 7106; or
- C. appropriate arrangements for employees adversely affected by the exercise of any authority under 5 USC 7106 by such management officials.

Note: The parties acknowledge that 38 USC 7422 must be considered in the exercise of these rights.

**ARTICLE 5 – UNION RIGHTS AND RESPONSIBILITIES**

**Section 1 – Introduction**

The Department recognizes that, as the exclusive representative of employees in the bargaining unit, the Union, at both the national and local levels, has the right to speak for and to bargain on behalf of the employees it represents. The Department will not bypass the National or Locals by entering into any formal discussions or agreements with other employee organizations or bargaining unit employees concerning all matters affecting personnel policies, practices, or working conditions of the NAGE bargaining unit. Additionally, the Department's duty to bargain will be consistent with 5 USC, Chapter 71 and Title 38, Chapter 74 and this Agreement.

**Section 2 – Union Rights**

- A. In accordance with 5 USC 7116(a)(3), in locations where more than one Union represents bargaining unit employees, the Department will not sponsor, control or otherwise assist any labor organization other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status.
- B. The Union recognizes the responsibility of representing the interest of all employees within the unit it represents without discrimination and without regard to labor organization membership in matters covered by the Agreement.
- C. The Parties recognize the need and shall meet at mutually agreeable times, dates and places that are reasonable and convenient to allow for effective and efficient operations. In the event that the Parties cannot quickly come to mutual agreement, the Department will supply three dates and times to allow the Union the opportunity to attend. When the Department declares an emergent meeting which necessitates Union attendance, the Department agrees to release the Local President or other available designee to attend the meeting. Regular recurring meetings to which the Union is invited as well as committees on which the Union has a seat will be held at times and places that are reasonably convenient for both Parties.
- D. In accordance with 5 USC 7116, the Department shall not restrain, coerce, discriminate against or interfere with any Union representative or employee in the exercise of his or her right nor shall any Union representative restrain, coerce, discriminate against or interfere with any employee in the exercise of his or her right.

### **Section 3 – Union Representation**

- A. The Union has the right to attend and send a representative to any formal discussion between the Department and one or more employees in the bargaining unit or their representatives concerning any grievance or any personnel policy or practice or other general condition(s) of employment. Advance written notification (including email) of any formal discussion will be given to the local Union President, or other individual designated in writing by the Union. The notice will include the date, time, location and purpose of the formal discussion. The Department agrees not to conduct formal discussions without giving the Union advance written notice and an opportunity to attend, in accordance with Section 2C of this Article.
- B. The Union at the local level will annually provide the Department with an updated list of the names, titles and work telephone numbers of all Union officials along with the room/location of the Union office and representatives as well as changes as they occur. The NAGE National office will provide to VACO LMR, on an annual basis, a list of the names, titles and all necessary contact information for its national officers and will update this list as necessary.
- C. Upon advance notification representatives of the Union will be allowed to visit facilities represented by the Union on appropriate Union business. Representatives of the NAGE National office shall be entitled to visit local facilities on appropriate Union business.
- D. Those activities concerned with organizing efforts and the internal management of the Union and any of its locals may be conducted only during the non-work time of the employees and

representatives involved. Similarly, when the Union, at both the National and Local level, schedules membership meetings, internal elections or similar events wholly or partially within the scheduled working hours of employees, any employee or representative attending or participating in such events must do so in a non-duty status

#### **Section 4 – Union Communication**

- A. Regular and open communication and the sharing of information pre-decisionally between the Parties assist in developing and maintaining an effective labor-management relationship. The Union has the right to present its views, either orally, electronically or in writing, to the Department on any representational matter involving personnel policies and practices and matters affecting working conditions. Additionally, consistent with its representational rights and duties under the Statute, this Agreement and VA policy, the Union may communicate to bargaining unit employees orally, electronically or in writing.
- B. The Department agrees to work with the Union:
  - 1. to provide the necessary equipment to allow for effective electronic communication;
  - 2. to provide training on the equipment and its applications;
  - 3. to protect the confidentiality of electronic communications; and
  - 4. to ensure that the users can validate the dates and times that messages are sent and received.

#### **Section 5 – Information**

In accordance with 5 USC 7114(b)(4), the Department agrees to provide the Union, upon request, and to the extent not prohibited by law, with data that is normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining and which does not constitute guidance, advice, counsel or training provided for management officials or supervisors relating to collective bargaining. Information will be provided within a reasonable period of time at no cost to the Union. If the Department determines that the information or data requested is not reasonably available in accordance with 5 USC 7114(b)(4), the Union will be notified as soon as practicable, so as to avoid unreasonable delays of contractual timeframes.

#### **Section 6 – Union Employee Communications**

The Department will not alter or censor the content of any direct communication(s) between the Union and bargaining unit employees. However, Department facilities will not be available for posting or distribution of defamatory material directed at Management or Union officials or programs. In the event the Department determines a Union posting to be defamatory, the Parties agree to the following process:

- 1. The Department will contact the Local President and inform him or her of its concern.
- 2. The Parties shall meet to discuss the posting.

3. If after meeting, the Parties disagree, the Local will immediately remove the posting and seek redress through other appropriate means.

### **Section 7 – Surveys and Questionnaires**

- A. The Department at any level will not communicate directly with bargaining unit employees through verbal or written surveys and questionnaires regarding conditions of employment without prior notification to the Union, where appropriate. This includes all questionnaires and surveys from all other agencies when distributed by the Department. Nothing in this section precludes the Union from the right to bargain over negotiable changes in conditions of employment under 5 USC Chapter 71.
- B. Participation in surveys will be voluntary unless the Parties agree to require participation. Employees will be assured that their responses will be confidential and their anonymity protected unless the Parties agree otherwise.
- C. The results of surveys of bargaining unit employees will be provided upon request.

### **Section 8 – New Employee Orientation**

- A. The Parties are encouraged to make a joint presentation to new employees to orient them about the Union and the Department. If the Local desires to make a presentation on its own, the Union will be afforded the opportunity to make up to a thirty minute presentation during each orientation session for new employees. The Local will be provided the same respect and dignity as other presenters and will not be subjected to intimidation or censure and the Union presenter will be respectful regarding the Department and its mission.
- B. The Department will provide the Local with notice of the date, time and place of the orientation. The Department will discuss, in advance, available times for the Union presentation and the Union will select a time or work with the Department to find an alternative time that is reasonably convenient to both Parties. Any Union official making the presentation will be allowed to use official time to make the presentation, if otherwise in a duty status, subject to the allocations in the Official Time Article. Stewards or Union officials may introduce themselves to new employees at the work site and inform them of their availability for representational functions so long as there is no undue disruption of work activities.
- C. At the orientation, the Department shall make available to each new bargaining unit employee:
  1. Hard copy of the Master Agreement;
  2. Hard Copy of the Supplemental Agreement, including any and all amendments;
  3. Access to VA Employee Handbook(s), including any and all amendments;
  4. Access to Memorandums of Understandings (MOU's);
  5. Access to Medical Center policies; and
  6. Form 1187

## **Section 9 – Voluntary Program**

The Parties shall provide each other reasonable advance notice of the initiation or discontinuance of all voluntary programs such as bond campaigns, blood programs, fund drives and other similar programs. If a duty to bargain is triggered under the Statute regarding voluntary programs, the Department will provide notice and bargain as appropriate. The Parties agree that employee participation in the Combined Federal Campaign, blood donor drives, bond campaigns and other worthy projects will be on a voluntary basis. This does not preclude publicizing such projects and encouraging employees to contribute.

## **ARTICLE 6 – OFFICIAL TIME**

### **Section 1 – General**

- A. Regarding Article 6 – Official Time, no local bargaining, including local supplementation negotiation, is permitted unless specifically allowed for in this Article. The national Parties, by mutual agreement, may modify this Article.
- B. The amounts of official time negotiated in this Article are the complete and total amounts the Parties have agreed are reasonable, necessary and in the public interest at every level throughout the Department. The official time amounts negotiated in this Article shall be available for the Union to use only for the purposes set forth in this Article.
- C. This Article places limits on the maximum amount of official time available to the Union for each year. Unless specified otherwise, for the purposes of this Article a year is defined as a fiscal year. The time allocated for the first year will be prorated based on the date of execution of this Agreement. If this official time is not used, it does not carry over to the following year. Unused official time at the end of a year will lapse and will not roll forward into any subsequent year.
- D. Consistent with the requirements of this Article, should the Union exhausts its allocations of official time in Sections 2 and 3 below, any additional requested time will be provided consistent with 5 USC 7131.
- E. The Department has a legitimate interest in ensuring that its employees are available to perform official VA duties for at least a portion of their work time so employees may maintain necessary skills to provide outstanding service. Therefore, no national union representative (see Section 2) will be on official time for more than 80 percent of his or her total work time per year, except as allowed for in Section 2 below, and no local union representative will be on official time for more than 80 percent of his or her total work time in a year, except as allowed for in Section 1F and 1G below.
- F. Upon the effective date of this Agreement, any Union representatives (the specific person holding the position) receiving a 100% official time allocation may be grandfathered for the remainder of the Fiscal Year (FY) in which the Agreement becomes effective and the following FY, provided they remain in that union position for that time period.

1. If the local allocations in Section 3A are insufficient for a grandfathered individual to be at 100%, additional official time above the allocation in Section 3A will be granted to make up the difference between the time allocated and 100% (2080 hours) only for the time period referenced in F above.
  2. Any time pursuant to this grandfather clause cannot be transferred.
  3. A grandfathered union representative may voluntarily choose not to maintain a 100% official time allocation.
  4. A list of grandfathered representatives will be identified and confirmed by the chief negotiators.
  5. This clause does not waive any of the Department's rights under the Statute or 38 USC 7422.
- G. The Union, at the national level, may use 50% national official time from Section 2 below to perform national duties and 50% local official time from Section 3 below to perform local duties, to create a maximum of four (4) representatives at 100% official time. This can only be done by giving notice to VACO LMR. No more than two 100% official time representatives may come from one Local. This cannot occur until all grandfathered representatives are using official time consistent with this Article, specifically 1E.
- H. No union representative shall use official or duty time to conduct internal union business.

## **Section 2 – National Union Representatives**

- A. The Department shall grant a total of 6240 hours per year of official time to the Union for allocation for National Union Representatives to conduct national duties. This grant of national official time may be used to make one national union representative to serve in a 100% official time capacity irrespective of the limitations in Section 1 above. The Union may determine the remaining allocations but such allocations are subject to the limitations described in Section 1 above and consistent with the bargaining obligations in Section 4 below.
- B. The Department will grant two separate allocations of 50% (1040 hours) official time for two NAGE national safety representative(s). The time may be used at any point in the fiscal year but does not carry over to the next fiscal year. These allocations are subject to the limitations addressed in Section 1 above. The Union may grant national official time from 2A to a safety representative consistent with this Article, specifically Section 1F above and consistent with any bargaining obligations in Section 4 below.
- C. Where it is necessary for a union representative to delegate a portion of his or her official time to an alternate:
  1. The alternate will be released to perform representational duties based on valid operational needs and when adequate notice has been given (normally four weeks). Emergency request(s) for delegation of time will be fully considered and the Department will make every effort to work out an arrangement during emergent situations. Upon request, the reason for the denial will be communicated to the Union in writing.

2. The alternate to whom the official time is delegated must also be delegated full authority to act and make decisions in the absence of the national official and fulfill the duties for which the official time was originally allocated. For example, national official time is only for national duties, not interchangeable between national and local duties.
3. The process for the delegation of national official time will be coordinated with the appropriate Department official at the local level. Notification of this delegation will be sent to VACO LMR.

**Section 3 – Local Union Representatives**

- A. Each Local is entitled to a bank of hours. This bank of official time, at the local level, will be granted based on the number of bargaining unit employees represented by each Local as follows:

1-99	1040 hours
100-250	1560 hours
251-399	2080 hours
400-599	2620 hours
600-799	3640 hours
800-999	4160 hours
1000-1499	4600 hours
1500+	additional 208 hours for every 100 employees above 1500

- B. This time may be distributed by the Local to as many Union representatives as the Local wishes, consistent with any bargaining obligations in Section 4 below. Local official time under this Section must be administered consistent with Section 1 above.
- C. The number of bargaining unit employees represented by that Local as of September 1<sup>st</sup> of each year will be used to determine the size of the bargaining unit. For the purposes of this Section a year is defined as a fiscal year. The time allocated for the first year will be prorated based on the date of execution of this Agreement. If this official time is not used, it does not carry over to the following fiscal year.
- D. Annually, no later than September 7<sup>th</sup>, the Department will forward a report of the bargaining unit size by facility to the NAGE National Office and a unit report to the Local president.
- E. In the event that a Local exhausts the bank of official time granted in this Section, as needed time may be requested consistent with 1E above.

**Section 4 – Official Time Usage**

- A. Official time under this Agreement may be used for the following activities:

1. Communicating about matters covered under the Agreement with employee(s), other Union officials and Department officials, including Labor-Management Forums;
  2. Preparing and investigating grievances, interviewing witnesses, preparing for arbitration, and meeting with Union representatives in connection with representational activity;
  3. Preparing to represent an employee, and representing an employee, in a statutory appeal process, including replies to the courts or administrative agencies such as FMCS, FSIP or FLRA;
  4. Preparing to negotiate over mid-term issues;
  5. Preparing to participate in a FLRA investigation or hearing as a representative of the Union;
  6. Formal discussions;
  7. Representing employees at investigations as set forth in Article 36 – Investigations;
  8. Grievance meetings;
  9. Arbitration hearings;
  10. Oral replies to disciplinary and adverse actions and actions based on unacceptable performance;
  11. Travel for representational duties or scheduled meetings, consistent with Article 19 – Official Travel;
  12. Participation in mid-term negotiations; and,
  13. Training on labor-management relations.
- B. Although local official time can be used in a regularly scheduled fashion or as needed (bank time), the Parties recognize that the establishment of bank time will best serve to cover representational needs during the year. The Parties recognize that the use of fixed scheduling with no bank time does not address the unplanned or unexpected representational needs. In either event, the Parties will meet any applicable bargaining obligations when triggered in 4C and 4D below.
- C. If a union representative has a regular, recurring, ongoing allocation of official time, the union representative will meet with his or her supervisor or designee, prior to using the official time, to work out a regular schedule when the union representative will be on official time. The Parties will document any negotiated arrangements and procedures regarding scheduled official time. Modifications to the schedule must be discussed with the supervisor or designee in advance or negotiated, if appropriate.
- D. If a union representative does not have a regular, recurring, ongoing allocation of official time, the union representative must contact his or her supervisor or designee, in advance of each instance, to request to be on official time.

1. When unscheduled (bank) official time is requested, the supervisor or other designated Department official will be advised of the general purpose of the request, how the union representative may be contacted and the estimated time of return.
    - a. Requests will not be arbitrarily denied.
    - b. This usage will be recorded.
  2. The union representative will notify the appropriate supervisor or designee when he or she returns to duty.
    - a. If the union representative will be delayed beyond the estimated time, he or she will notify the immediate supervisor or Department official to request additional needed time, which will not be arbitrarily denied.
    - b. If granted, the supervisor or designee will also be notified of the time of return.
  3. If a valid operational need of the Department would not permit the union representative to use the official time when requested, another occasion will be determined, keeping in mind the interests of the Union and bargaining unit employees as well as the needs of the Department.
    - a. No undue delay should result from these efforts nor will either Party be compromised in the exercise of their rights by such efforts.
    - b. Prior to canceling prescheduled official time, the Department will make reasonable efforts to provide coverage so as not to necessitate the need to cancel the official time.
    - c. If it is necessary to cancel official time, the Department will provide a written explanation to the Local, upon request.
  4. If scheduled and cancelled, the official time can be returned to the bank or the Union may make arrangements to transfer the official time to have a different representative perform the function. If cancelled, the Parties will work to timely reschedule cancelled official time and unused official time will be returned to the available bank allocation.
- E. All Union representatives wishing to use official time will request the time utilizing the VA NAGE Official Time Form in Appendix B or successor. The supervisor or designee will be advised of the general purpose of the request (as described in Section 4A above) how the union representative may be contacted and the estimated time of return. If regularly scheduled, the form needs only to be filled out one time, unless changes are requested.
- F. Every three months, the Department will provide the Local with the current official time balance. Should the Department fail to timely provide the information, the Local will provide notice to the Chief of Human Resources or designee with one reminder message and the Department will immediately provide the information. If the Union does not challenge the official time balance within 30 calendar days, the Department's report is presumed to be accurate.
- G. Requests for official time under this Section will not be arbitrarily denied.

- H. If the Department's electronic time and attendance system, or successor system, is updated to allow for the documentation of official time usage, this time will be entered by the union representative.

## **Section 5 – Labor-Management Forums and Official Time**

- A. Any official time granted under this Section is subject to the requirements in Section 1E above. Time for forums and forum created Committees is official time outside the official time allocation negotiated in this Article. The purpose of this Section is to provide for official time in addition to allocations given above but cannot be combined with time from Section 2 above and Section 3 above to exceed the 80% limitations described in Section 1E above.
- B. National Labor-Management Forums:
  - 1. The Union, at the national level, will have an additional 1000 hours of official time to designate to Union representatives, at the national level, to attend the National Partnership Council (NPC) meetings and any jointly created subcommittees by the NPC. This time will be allocated by the Union, at the national level, by submitting a timely notice to VACO LMR which includes the committee name, the representative(s) appointed and the official time hours used to attend. The additional 1000 hours is on a yearly basis, at the beginning of the fiscal year, and does not carry over from year to year.
  - 2. VACO LMR will advise the local facility of the union representative being approved for official time. The union representative will work with their supervisor to coordinate the release. If release is not possible at the time requested, a mutually agreeable time will be established in a timely manner. However, the Department will make every effort to have the union representative released for NPC or its subcommittees.
  - 3. Upon request, VACO LMR will provide to the Union, at the national level, the balance of hours.
- C. Intermediate and Local Labor-Management Forums:
  - 1. Official time will be granted to attend facility and VISN, or other applicable intermediate level, labor-management forums consistent with Article 11, Labor-Management Cooperation of this Agreement. This official time will be in addition to the amounts granted in this Article.
  - 2. Additionally, for attendance at jointly created subcommittees related to an intermediate or local forum, official time will be granted to attend for approved Union representatives. The official time will be in addition to the amounts granted in this Article.

## **Section 6 – Performance Evaluation**

The use of official time, in accordance with this Agreement, will not adversely affect an employee's performance evaluation or proficiency report, as applicable.

## **Section 7 – Return to Duty of 100% Union Representatives**

- A. This Section covers Union representatives previously serving in a 100% official time capacity who are returning to an employee position.
- B. Reassignment or return to an employee position will be consistent with the Statute and 38 USC 7422.
- C. The employee can request to return to the same or similar position of responsibility that he or she previously occupied as an employee. The Department will make reasonable efforts to return the employee to a same or similar position, based upon the skills of the employee and valid operational needs of the Department. If no position is requested, the Department will place the employee in a position based upon the skills of the employee and the needs of the Department.
- D. Additionally, the employee can request to return to the same tour of duty that the employee served in. When requested, the Department will make reasonable efforts to return the employee to the same tour of duty, based on valid operational needs of the Department. If no tour of duty is requested, the Department will place the employee in a position based upon the skills of the employee and the needs of the Department.
- E. The Department will provide training, orientation and education, as applicable, for the employee to return to duty.
- F. Union representatives have the same right of any employee to apply and be selected for other position(s) for which they are qualified, consistent with this Agreement.

## **ARTICLE 7 – EMPLOYEE RIGHTS**

### **Section 1 – General**

- A. In an atmosphere of mutual respect, all employees shall be treated fairly and equitably and without discrimination in regard to their political affiliation, union activity, race, color, religion, national origin, gender, sexual orientation, marital status, age, or disabilities irrespective of the work performed or grade assigned. Employees will also be afforded proper regard for and protection of their privacy and constitutional rights. Additionally, the Department will endeavor to establish working conditions, which will enhance and improve employee's morale and efficiency consistent with applicable laws, EEO regulations and the Department's EEO policies.
- B. Employees have the right to have all communications, including but not limited to, instructions and assignments, given in a clear, reasonable and constructive manner. Such communications will be provided in an atmosphere that will avoid embarrassment or ridicule.
- C. If an employee is to be served with a warrant or subpoena, the Department will take steps to ensure that it will be done in private without the knowledge of other employees to the extent it is within the Department's control and does not interfere with law enforcement activity.
- D. Consistent with Article 37 - Discipline and Adverse Actions, disciplinary, adverse actions and major adverse actions will be impartial, taken with due process and for just cause, consistent with applicable laws, regulations and Department policy.

- E. Employees understand that management has the right to assign work. However, no employee will be used as an example to threaten other employees; be subjected to intimidation, coercion, harassment, or be given demeaning, degrading or other similar unreasonable work assignments as reprisal for exercising any right(s) under this Agreement or the law.
- F. All VA employees will, consistent with this Agreement and other agreements between the parties:
  - 1. Be provided a healthy and safe environment;
  - 2. Be encouraged to give suggestions and ideas to make the Department a better workplace and enable the Department to better serve veterans;
  - 3. Be encouraged to enhance their work life and career development; and,
  - 4. Be afforded assistance and told of expectations by the Department to enable them to perform their jobs, consistent with Article 22 - Performance Appraisal.

## **Section 2 – Union Membership**

Consistent with 5 USC 7102, each employee shall have the right to form, join, or assist the Union, or to refrain from any such activity, freely and without fear of penalty or reprisal, from both the Union and the Department, 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 a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to the Employer or other appropriate authorities; and
- B. To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this Agreement.

## **Section 3 – Rights to Union Representation**

- A. The Department recognizes an employee's right to assistance and representation by the Union, and the right to meet and confer with NAGE representatives during duty time, consistent with law and this Agreement. If the employee or the Union official request to meet and confer regarding representational issues, the Department will endeavor to allow the employee to be released within the work shift in which the request is being made. If release is not possible at the time requested, the employee will be advised as a date and time when release is possible.
- B. An employee must have supervisory permission prior to leaving the work unit unless the employee is on break or meal period.

## **Section 4 – Use of Recording Devices**

- A. No electronic recording of any conversation between an employee and Department official may be made without mutual consent except for Administrative Investigations, Inspector

General investigations, other law enforcement investigations, Office of Resolution Management (ORM) / Equal Employment Opportunity (EEO) investigations, or any matter by an independent court reporter.

- B. When a recording is made, the employee will be given the opportunity to review the transcript for accuracy and will be provided with a copy of the tape either at the time it is made or as soon as practicable and without any unreasonable delay, as well as a transcript if one is made. Information obtained in conflict with this section will not be used to support any action taken under Article 37 - Discipline and Adverse Actions.

### **Section 5 – First Amendment Rights**

Employees have the right to present their views to Congress, the Executive Branch, and other authorities or to the public, and to otherwise exercise their First Amendment rights without fear of penalty or reprisal, consistent with applicable laws (e.g. the Hatch Act, the Privacy Act, the Health Insurance Portability and Accountability Act and government-wide regulations relating to security and information technology).

### **Section 6 – Access to Documentation or Records**

Employees have the right to be made aware of any records, specific to the employee, personally maintained under their name or any other personal identifier. Employees will have access to their eOPF and the Department will, upon request, assist employees in accessing his or her eOPF. Consistent with Article 38 - Official Records, employees may request copies of any records maintained under their name or any other personal identifier.

### **Section 7 – Personal Rights**

- A. Employees shall have the right to direct and fully pursue their private lives, personal welfare, and personal beliefs without interference, coercion, or discrimination so long as such activities do not conflict with job responsibilities or any applicable laws, government-wide regulations and VA policy.
- B. The Department will make every reasonable effort to provide an area for employees to secure personal belongings.
- C. Upon request, the Department or the Union shall instruct employees on how to file a claim for reimbursement under 31 USC 3721 and related regulations and will make forms available in case of loss if some personal item is damaged, irretrievably lost or destroyed.

### **Section 8 – Employee Right to Privacy**

Searches and seizures by the Department of the private property of its employees will be conducted consistent with the constitutional constraints of the Fourth Amendment, this Agreement and all other laws and regulations that apply.

- A. Employees may store personal papers and effects (such as handbags, briefcases, backpacks, etc.) in their offices, desk, and file cabinets. However, a search or seizure of such items without a warrant may be justified if the Department has reasonable grounds for suspecting that the search will produce evidence that the employee is guilty of misconduct,

or criminal activity or that the search is necessary for a non-investigative purpose, such as insuring the internal security of the Department.

- B. Consistent with 5 USC 7106(a)(1) and VA Handbook 0730, it is the right of the Department to determine its internal security practices. The parties agree that when the Department utilizes screening methods prior to entry onto VA property, search and screening methods will be conducted based on the facts of the specific situation.

### **Section 9 – Whistleblower Protection**

Consistent with the Federal Whistleblower Protection Act, 5 USC 2302(b)(8), employees will be protected against reprisal for the disclosure of information not prohibited by law, rule, regulation or Executive Order, that the employee reasonably believes evidences a violation of law, rule or regulation, gross mismanagement, a gross waste of funds, an abuse of authority or a substantial and specific danger to public health or safety. Consistent with the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) and VA policy, the Department will notify and inform employees about the Federal Whistleblower Protection Act. Training will be provided to employees on duty time.

### **Section 10 – Unlawful, Improper or Conflicting Orders**

- A. An employee may refuse an unlawful order when the order will require the employee to violate the law. When an employee believes that he or she has been given an unlawful order, the employee will immediately bring his or her specific concerns to the supervisor or appropriate Department official. The Department official will consider the employee's concern and promptly notify the employee whether the order is lawful or unlawful. Refusal to obey an unlawful order will not subject the employee to disciplinary or adverse action or major adverse action.
- B. The employee has a right to question an order that he or she believes to be improper. The employee will immediately, or as soon as practicable, bring his or her concern about the improper order to an appropriate supervisor. The supervisor will discuss the order and advise the employee whether the order is proper or not. If the employee still believes the order is improper, he or she is required to follow the order but may subsequently grieve it. If an employee is required to follow the order and the order is subsequently determined to be an improper order, the employee will not be disciplined for following the improper order.
- C. An employee will not be subject to disciplinary action as a result of conflicting orders given by Department officials as long as the employee immediately, or as soon as practicable, advises the official who issued the most recent order that a conflict exists. If the official who gave the most recent order is unavailable, another appropriate Department official shall be notified and that Department official will determine which order shall be followed.
- D. An employee who wishes to express concern about a work assignment he or she was asked to perform, including assignments that require him or her to potentially act outside the scope of practice, privileges, competencies or qualifications, he or she will immediately, or as soon as practicable, notify the appropriate supervisor verbally and/or in writing. The employee is free to make suggestions or recommendations without fear of intimidation or reprisal. The Department will give full consideration to any concerns raised, as appropriate.

### **Section 11 – Group Meetings**

The parties agree that regular and periodic (preferably monthly) group meetings will be held within each service, department, or unit, to discuss concerns of both the Department / Management and employees. The Local shall be notified of such meetings and be given the opportunity to attend.

## **Article 8 – COUNSELING**

### **Section 1 – General**

- A. Counseling shall be used constructively to encourage an employee to improve his or her conduct and performance deficiencies and will be accomplished through private discussion between a Department official and the concerned employee.
- B. Generally, an employee does not have a right to Union representation in routine counseling sessions. When an employee has a right to Union representation, he or she shall be advised of that right at the same time he or she is advised of where and when the meeting is scheduled. Additionally, if there is to be more than one Department official involved in the counseling session, the employee will be notified in advance that he or she may have a Union representative present at the counseling.
- C. When a Department official, at any time during a counseling session with an employee, questions the employee and the employee reasonably believes that the questions may lead to discipline, the employee is entitled to Union representation upon request.
- D. This section is not intended to limit the Union's right to attend formal discussions (i.e. if a routine counseling session becomes a formal discussion) consistent with the Article 5 - Union Rights and Responsibilities.

### **Section 2 – Oral Counseling**

When it is determined that oral counseling is necessary, the counseling will be accomplished during a private meeting with the employee. If after such a meeting, the employee is dissatisfied and wishes to pursue a grievance, the employee may proceed to either Step I or to Step II of the grievance procedure.

### **Section 3 – Written Counseling**

- A. Written counseling will be accomplished in the same manner as specified above, except that two copies of a written counseling will be given to the employee.
- B. A written counseling for misconduct may only be retained and used to support an action taken under Article 37 - Discipline and Adverse Actions for up to six months unless additional related misconduct occurs and then it may be retained up to one year.
- C. A written counseling for performance may only be retained and used beyond the appeal period of the annual performance rating to support a timely personnel action related to that rating or any timely action taken during that period.

- D. In the case of probationary employees, written counselings may be kept up to the time a decision is made whether or not the employee will be continued beyond the probationary period unless the employee is separated and an appeal is filed.

#### **Section 4 – Litigation**

Section 3 prescribes timeframes for how long the Department can retain and use a written counseling to support an employment action relating to conduct or performance and the Department will not indefinitely maintain a record of written counseling. When a grievance or other litigation is initiated (e.g. EEO, MSPB, Office of Special Counsel, etc.) within one year of issuance of the written counseling, it may be kept and used during the pendency of the litigation and any appeals only for reasons directly related to the litigation. However, the Parties agree that during this time it may not be utilized or considered to support additional discipline. Once the litigation is complete, or if no litigation is filed within one year of issuance of the written counseling, the written counseling shall be purged from any Department records, including employee records and supervisory files.

### **ARTICLE 9 – MUTUAL RESPONSIBILITIES**

#### **Section 1**

The Parties to this agreement assume mutual responsibility to abide by the provisions set forth in this Agreement. This Master Agreement can only be renegotiated by the Parties consistent with Article 72 - Duration.

#### **Section 2**

The Department and the Union each have a responsibility to assure that those persons representing their party are aware of the rights and responsibilities of both Parties.

### **ARTICLE 10 – LABOR-MANAGEMENT TRAINING**

#### **Section 1 – Union Sponsored or Requested Labor-Management Relations (LMR) Training**

- A. Local unions will be authorized official time in an amount not to exceed 40 hours per individual and not to exceed 280 hours per year for all local officials for each Local union. This time will only be utilized for labor-management training and will be regulated in accordance with any requirements outlined in Article 6 - Official Time. Requests for any additional training should be addressed locally.
- B. Training which relates to internal Union business will not be conducted or attended on official time.
- C. Requests to attend training off station must be submitted to the Director or designee as soon as practicable but no later than 21 calendar days in advance of such training. The request must include the name(s) of the officer(s)/steward(s), date, time, place of training or orientation session and the subject matters to be covered. A response to the request will be provided to the Local as soon as practicable, but no later than ten calendar days prior to the

training session. If the Union is unable to provide this advance notice through no fault of their own, the Department may approve this training in the absence of the 21 day notice requirement (i.e., it was impossible to provide the training notice to the Parties within 21 days).

## **Section 2 – Use of Equipment**

Locals will be authorized to use Department owned equipment when available.

## **Section 3 – Training Session Attendance**

Employees who normally work off tour shifts or weekends may have their tours of duty changed to attend training sessions under this Article.

## **Section 4 – Joint Master Agreement Training**

- A. The Parties will work together in an expeditious fashion to jointly develop Master Agreement training.
- B. No later than 60 days after the effective date of the Master Agreement, the parties will schedule and hold a national joint training committee meeting. This national committee will be made up of four Department representatives and four NAGE representatives. The national training committee's initial responsibilities will be to:
  - 1. Develop joint training and materials on the Master Agreement;
  - 2. Determine the method of training and explore the most effective means for training delivery;
  - 3. Determine the number of trainers;
  - 4. Schedule additional meeting(s) if necessary; and
  - 5. Schedule and provide training.
- C. At least 30 days prior to the first meeting the Chief Negotiators for the Contract will exchange the names of the committee members and select the location so that appropriate travel and schedule arrangements may be made. The Department will pay all travel and per diem costs for both Parties in accordance with Federal law, rule and regulation. NAGE representatives will be on official time for the meetings and travel.
- D. The Department will be responsible for paying travel and per diem for the trainers, as appropriate, and in accordance with Federal law, rule and regulation.
- E. By mutual agreement, the local Parties may have additional trainers or training sessions.
- F. Once the joint Master Agreement training is completed the joint training committee will be disbanded.

G. Any joint training in the Article does not preclude either party from conducting additional separate training or distribution of materials.

### **Section 5 – Joint Third-Party Sponsored Training**

The Parties may mutually agree to conduct joint third-party sponsored training. The Department will bear the cost of such training. Third-party sponsored training may be considered duty time or official time as appropriate.

## **ARTICLE 11 – LABOR-MANAGEMENT COOPERATION**

### **Section 1 – Guidance**

The Parties agree that the following sections should be interpreted as suggestions, not prescriptions.

### **Section 2 – History (Provided for Information Purposes)**

- A. Since the inception of 5 USC Chapter 71, cooperation and communication have been and remain goals of labor-management relations. The implementation and maintenance of a cooperative working relationship between labor and management known as “Partnership” was established by Executive Order 12871 and a Presidential Memorandum dated October 28, 1999. The Order and the memorandum were revoked by Executive Order 13203 in 2001.
- B. In December 2009, Executive Order 13522 was issued, creating labor-management forums. Pursuant to the spirit of that Executive Order and this Master Agreement, the Department shall allow employees and their Union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subject of bargaining under 5 USC 7106; provide adequate information on such matters expeditiously to Union representatives where not prohibited by law; and make a good-faith attempt to resolve issues concerning proposed changes in conditions of employment, including those involving the subjects set forth in 5 USC 7106(b)(1), through discussion in its labor-management forums.

### **Section 3 – Purpose**

The desire and intent in this Article is to describe and encourage effective labor-management cooperation. The Department and the Union are committed to working together at all levels to improve service to Veterans, ensure a quality work environment for employees, and effect a more efficient administration of VA programs. To that end, effective labor-management relationships and other collaborative activities may allow the Parties to reduce the amount of, or eliminate the need for, formal bargaining.

### **Section 4 – Principles**

Labor-management cooperation is premised on open communication between Union and Department officials designed to promote effective and efficient administration of the Department’s mission and improved services to Veterans. Recognizing that more than one approach may lead to successful labor-management relations, the Parties are encouraged to

jointly explore different methods to create or enhance an effective labor-management relationship. Use of the following principles is strongly encouraged to assist the parties in developing and maintaining successful relationships:

- A. Cooperation;
- B. Mutual respect;
- C. Open communication and sharing of information at all points along the decision-making process;
- D. Trust;
- E. Efficiency;
- F. Consideration of each other's views and interests;
- G. Pre-decisional Involvement;
- H. Identification of problems and workable solution;
- I. Understanding of, and respect for, the different roles that the Department and the Union can play in achieving mutual goals; and,
- J. Minimizing or eliminating collective bargaining disputes.

### **Section 5 – Scope**

Open communication and collaboration can lead to a functional and effective labor-management relationship and improve the delivery of Department services. Collaboration may enhance the decision-making process by providing the opportunity for the Union and the Department to discuss proposed changes, identify potential problems, exchange ideas and explore solutions in order to reduce or avoid the need for collective bargaining. Additionally, effective collaboration may include the development of metrics to monitor improvements in areas such as labor-management satisfaction, productivity gains, and cost savings. This may allow the Parties to pre-decisionally discuss or bargain over permissive subjects in accordance with Article 4 - Management Rights and to adhere to the current concepts of Executive Order 13522.

### **Section 6 – Training**

To promote effective labor-management relationships, the Parties may mutually determine the need for, and identify, appropriate training. Some types of training that may be appropriate include alternative dispute resolution, work process improvement, group dynamics, and relationship by objectives.

### **Section 7 – Use of Time**

- A. Union officials participating in a labor-management committee (forum) will be on official time, consistent with Article 6 - Official Time.

- B. When the need arises, the labor-management committee (forum) may use subject matter experts (SME). Since this is a collaborative process, the labor-management committee (forum) will attempt to reach consensus when selecting an SME. SMEs are on duty time and in a non-union capacity.
- C. The Department will make every effort to release Union representatives designated to attend the labor-management committee (forum).

### **Section 8 – Expenses Related to Travel**

The labor-management committee (forum) may hold meetings on site as well as off station. When the activities of the labor-management committee (forum) are offsite, the labor-management committee (forum) will make every effort to utilize appropriate alternatives to conduct business remotely rather than face-to-face. In the event that travel is required by the Department to attend the labor-management activity, travel will be authorized consistent with Article 19 - Official Travel and the Federal Travel Regulations.

## **ARTICLE 12 – LABOR-MANAGEMENT RELATIONS MEETING**

- A. The purpose of a joint labor-management relations meeting is to foster positive relationships between Department and NAGE leadership. This meeting also provides the Parties the opportunity to engage in dialogue and seek solutions on important issues related to the Department's mission. This communication can generate improvements in employee morale and working conditions resulting in a workforce that provides and enhances high quality cost effective service to Veterans. Ideally, this will reduce the need for formal bargaining, grievances and other third party intervention.
- B. The joint labor-management relations meeting will occur face-to-face annually, normally in October. The meeting will be for no more than two days. When one of the Parties believes that it is necessary to extend the meeting to a third day, the Parties will discuss the need for additional meeting time and may mutually agree to extend the meeting to a third day. The location of the meeting will be in Washington, DC, unless the Parties mutually agree otherwise. Notwithstanding, the Union and the Department will jointly discuss whether future annual meetings can be held via telecommunications technology by exploring the use of technology available to the Parties.
- C. Additionally, when the Parties agree that a need for an additional meeting is necessary, there may be a one day, joint labor-management relations meeting, which will be conducted via V-tel or other electronic means, normally in April. When one of the Parties believes that it is necessary to extend the meeting to a second day, the Parties will discuss the need for additional meeting time and may mutually agree to extend the meeting to a second day.
- D. The Department will pay for travel and per diem consistent with the federal travel regulations and VA policy for 13 representatives to attend the face-to-face labor-management relations meeting.
- E. Official time for these meetings will be regulated in accordance with any requirements outlined in Article 6 - Official Time.

- F. The Union will provide the Department with the names of the Union designated representatives as far in advance as possible but no later than three weeks in advance of the meeting. Additionally, agenda items will be finalized at least three weeks in advance of the meeting.
- G. Employees who normally work off tour shifts or weekends may have their tours of duty changed to attend the labor-management relations meeting.
- H. Both parties will designate a point of contact to facilitate meeting arrangements no later than 90 days prior to the scheduled meeting(s).

## **ARTICLE 13 – NATIONAL CONSULTATION RIGHTS AND MID-TERM BARGAINING**

### **Part A: National Consultation Rights**

#### **Section 1 – Purpose**

- A. These procedures shall govern the conduct of agents and representatives of the Department and the Union with regard to National Consultation Rights (NCR) in accordance with 5 USC 7113. (Note: To the extent mid-term bargaining applies, national consultation rights would be inapplicable).
- B. These procedures shall remain in full force and effect as long as the Union meets the criteria prescribed by the FLRA. If the Department decides to terminate NCR, the Department will serve notice of its intent, together with a statement of the reasons for termination. Upon receipt of a decision, the Union may petition the FLRA regarding any change to the status of NCR. NCR shall continue pending the resolution of any petition.

#### **Section 2 – Procedure**

- A. The Department shall provide written and electronic notice of any substantive change in conditions of employment proposed by the Department to which the Union is entitled to exercise its NCR. The notice will include the change as well as any supportive documents.
- B. The Union will designate a representative and alternate, electronically or in writing, who will receive all notices and provide views and comments as outlined in this Agreement.
- C. The Union shall be permitted reasonable time, up to 30 calendar days from the date of receipt of the notice, to present its views and recommendations, in writing, electronically or telephonically to the Department for review and consideration. Telephonic responses will be recorded and confirmed electronically. If no views or recommendations are provided within the specified time frame, the Department is free to proceed with the proposed change, subject to fulfilling any bargaining obligations.
- D. The Department shall consider the views or recommendations by the Union before taking final action on any matter with respect to which the views or recommendations are presented.
- E. The Department shall provide the Union a written statement of the reasons for taking the final action.

- F. The Parties may mutually agree to extend any time frames in this Agreement.
- G. Nothing in this Agreement shall be construed to impair, diminish or otherwise limit the right of the Union or the Department to engage in collective bargaining.

### **Section 3 – Official Time**

The exercise of NCR is an appropriate use of official time. The official time for NCR will be regulated in accordance with any requirements outlined in Article 6 - Official Time.

## **Part B: Mid-term Bargaining**

### **Section 1 – Definition**

Mid-term bargaining is defined as all negotiations, when a duty to bargain is triggered under the Statute, including Local, National and Department initiated, which occur during the duration of this Agreement, concerning changes to conditions of employment not covered by the terms of this Agreement. The Parties agree to negotiate in good faith in accordance with 5 USC 7114(b). Nothing shall preclude the Parties from negotiating procedures and appropriate arrangements which Department officials will observe in exercising any rights under 5 USC 7106.

### **Section 2 – General**

- A. The purpose of this Article is to establish an orderly process to govern mid-term negotiations at the National, Intermediate and Local levels.
- B. When the Union demands to bargain as a result of Department initiated changes in working conditions of bargaining unit employees that triggers a duty to bargain under the Statute, the Department will bargain as appropriate at the level defined by this Article.
- C. The level at which bargaining occurs will be determined by the organizational level where the proposed change is being mandated.
  - 1. If the change is mandated at the National level the change will be negotiated with NAGE National.
  - 2. If the change is mandated at the intermediate (VISN or MSN) level, notice will be given to the designated NAGE National representative and will be negotiated consistent with Part B, Section 6.
  - 3. If the change is mandated at the local level the change will be negotiated at the local level.
- D. At each level described in this Article, the Department and the Union will designate at least one, but no more than three representative(s), electronically or in writing, who will receive all notices as outlined in this Agreement. The designation (s) will include the name, business address, email address, and all VA phone numbers including those of handheld devices (e.g. Blackberry) issued by the Department.

- E. Participating in mid-term bargaining is an appropriate use of official time. The official time for mid-term bargaining will be regulated in accordance with any requirements outlined in Article 6 - Official Time.
- F. Extensions or reductions of any timeframes in this Article may be done by mutual agreement.

### **Section 3 – Changes in Existing Law or Regulation**

- A. The Parties agree that when any changes in statutory law or judicial decisions that conflict with this Agreement occur, the Department will notify the Union in writing. The Parties, through post implementation bargaining, will meet within 30 calendar days after the notice to negotiate over appropriate arrangements and procedures regarding changes that impact the Agreement.
- B. If a government-wide regulation requires the Department to make a change which conflicts with this Agreement, the Department will notify the Union, in writing, of the proposed change prior to implementation, and bargain as appropriate and consistent with the timeframes in Part B, Section 5.
- C. Proposals will only relate to changes noted by the requirements of Part B, Section 3A or 3B above.

### **Section 4 – Union Initiated Changes**

In addition to the ability to bargain over procedures and appropriate arrangements when the Department exercises its rights under the Statute, the Union may initiate mid-term bargaining on expired Department's policies or regulations. The Parties agree that renewal of an expired policy is greater than a de minimis change triggering the Department's obligation to provide notice and bargain consistent with the Statute. The procedures and time limits for the appropriate level will apply.

### **Section 5 – National Level Bargaining Process**

- A. When the Department proposes changes at the National level affecting working conditions of bargaining unit employees, provisions of this Section will apply. The Department will forward all proposed changes for which there is a bargaining obligation to the designated National representative(s), consistent with Part B, Section 2D above. Notification will be sent electronically. The date of receipt for electronic notices will be three business days following the date of delivery receipt. To facilitate notice of proper service, the Parties are encouraged to use the delivery receipt function of VA email and make efforts to ensure delivery was actually made if the sender does not receive a delivery receipt. Upon request, after receipt of the electronic notification in this Section, as a professional courtesy, the Department will provide a paper copy of the email notice and any attachments via U.S. mail..
- B. It is recommended that when the Department sends electronic notices in Part B, Section 5A it will not use expiration dates or other automatic expiration options in the email providing the notice.

- C. In addition to providing the Union notice of the desired change in working conditions, the Department will simultaneously forward a copy of all necessary and relevant documents, if any, upon which it relied in proposing the action as well as three dates and times for consideration for a potential briefing.
- D. If the Union requests a briefing, the briefing will occur within 20 calendar days from receipt of the notification described in Part B, Section 5A above. When the Union submits its request for briefing it will either select one of the offered dates provided by the Department or provide three alternate dates and times when it is available for briefing within the 20 calendar day timeframe of this Section. Regardless, it is understood that the Parties must mutually agree upon dates and times for briefings. The Union's request for a briefing will be provided electronically to the designated Department official(s). The briefing will be conducted telephonically. By mutual agreement, the Parties may agree to a face-to-face briefing and travel and per diem will be paid by the Department pursuant to Federal Travel Regulations.
- E. The Union shall have 10 calendar days after the conclusion of the briefing or 30 calendar days from receipt of the notice provided in Part B, Section 5A above, whichever is longer, to request bargaining and forward a complete set of written proposals to the designated Department official(s). If no briefing is requested, as stated above, the Union shall have 30 calendar days from the date of receipt of notification to request bargaining and to forward a complete set of written proposals to the designated Department official(s). The demand to bargain and the proposals will be provided electronically. If the Union has not submitted a demand to bargain and a complete set of written proposals within the required timeframes, the Department may implement the proposed change. This does not preclude the parties from discussion post-implementation.
- F. The Parties will begin negotiations within 15 calendar days after the Union's demand to bargain and written proposals are submitted.
- G. The Parties will normally conduct telephonic negotiations for National mid-term bargaining. However, the Parties may mutually agree to conduct face to face negotiations, either in lieu of or in addition to, telephonic negotiations. Telephone negotiations shall normally be for no more than four hours per day, four times within the 21 days. Face-to-face bargaining will normally take place on Tuesday, Wednesday and Thursday from 8 a.m. to 4:30 p.m., break and meal times will be mutually determined by the Chief Negotiators. Travel days will normally be Monday and Friday. The face-to-face negotiations will be held in the Washington, DC area or an alternate area if mutually agreed upon by the Parties. Travel and per diem will be paid to bargaining team members by the Department pursuant to Federal Travel Regulations.
- H. The Parties understand they have the mutual obligation to timely bargain in good faith. To that end, it is the expectation of the Parties to normally complete the bargaining process within 21 calendar days. If at the end of the 21 calendar days the Parties have not reached agreement, the Parties will either mutually agree to continue bargaining or contact the FMCS for assistance, as appropriate. Contact to the FMCS may be done individually or jointly by the Parties.
- I. Each party may have up to five negotiators, which by mutual agreement may be increased based on the complexities and/or number of issues to be negotiated. The Parties will exchange the names of the bargaining team members for the specific issues(s) to be

discussed. This does not preclude attendance of subject matter experts by mutual consent of the Parties.

- J. No electronic recording or verbatim transcripts will be made during the negotiations. However, each Party may make and keep its own notes and records. Bargaining team members may use non-voice activated laptops at the table unless required by a disability of a team member.
- K. National Memorandums of Understanding (MOU) will be available electronically and provided to each local Human Resources Officer (HRO) within seven calendar days of signature. Upon HRO's receipt of the MOU a Department official at the local facility will distribute the MOU electronically to the Local President and post the MOU on either the local facility's web page, or bulletin boards within three calendar days. The Parties may mutually agree to develop and use more specific rules through local negotiations for distribution of MOUs under this Section.
- L. In addition to the requirements in Part B, Section 5H above, at any time during the negotiations, if the Parties are unable to reach agreement through this effort, either Party may request assistance from the FMCS.
- M. Extensions or reductions of any time periods will be by mutual agreement, in writing, prior to the expiration of the relevant time period.
- N. There is no limit on the number of caucuses held. However, each Party will make every effort to respect the other Party's time during caucuses. Each Party will provide a reasonable estimate of the anticipated length of the caucus and will provide updates if more time is needed.
- O. The Chief Negotiator for each Party will initial each section as tentatively agreed. There is no final agreement until all proposals have been signed.

### **Section 6 – Intermediate Level Bargaining Process**

- A. Consistent with this Article, the Parties agree that when the Department, through any Intermediate level (VISN or MSN), mandates a change, bargaining will take place at the Intermediate level in accordance with Part B, Section 2C, above. When bargaining is conducted at the Intermediate level, the Union will provide the names of the bargaining team members for the specific issue (s) to be negotiated. The Parties will make every effort to use bargaining team members from the geographic area of concern. Intermediate level Mid-term bargaining will follow the procedures, timeframes and travel requirements outlined in Part B, Section 5K. If face-to-face bargaining takes place at the Intermediate level, the location will normally be at the VISN or MSN office unless the Parties mutually agree otherwise.
- B. The Department will distribute copies of all MOUs in accordance with Part B, Section 5K. above.

### **Section 7 – Local Level Bargaining Process**

- A. The Department will forward all proposed changes and will simultaneously forward a copy of all necessary and relevant documents for which there is a bargaining obligation to the

designated local Union representative(s), consistent with Part B, Section 2D above. Notification will be sent electronically unless the local Parties negotiate an alternative method. When electronic notification is used, the date of receipt will be three business days from delivery receipt. To facilitate notice of proper service, the Parties are encouraged to use the delivery receipt function of VA email and make efforts to ensure delivery was actually made if the sender does not receive a delivery receipt. If the Parties negotiate an alternative method for local notice, effective date of such notice will also be negotiated by the Parties. In addition to providing the Union notice of the desired change in working conditions, the Department will simultaneously provide a copy of all necessary and relevant documents, if any, upon which it relied in proposing the change. The Department will also provide three dates and times for a potential briefing.

- B. The Local shall have 10 calendar days from the date of receipt of notification to request a briefing to discuss the proposed changes. If the Union requests a briefing, the briefing will occur within 15 calendar days from receipt of the notification described in Part B, Section 7A above. When the Union submits its request for briefing it will either select one of the three offered dates provided by the Department or provide three alternate dates and times when it is available for a briefing within the 15 calendar day timeframe of this Section.
- C. The Union shall have 10 calendar days after the conclusion of the briefing or 30 calendar days from receipt of the notice provided in Part B, Section 7A above, whichever is later, to request bargaining and forward a complete set of written proposals to the designated Department official(s). If no briefing is requested as stated above, the Union shall have 30 calendar days from the date of receipt of notification to request bargaining and to forward a complete set of written proposals to the designated Department official(s). The demand to bargain and the proposals will be provided electronically unless the local Parties negotiate a different method. The Parties will begin negotiations within 15 calendar days after the Union's demand to bargain and written proposals are submitted.
- D. Normally, briefings at the local level will be face-to-face.
- E. The negotiation team will consist of no more than three Local and three Department members. Upon mutual agreement, the numbers of team members may be increased. The negotiation session will occur during normal business hours and will ordinarily be held on Department property.
- F. If the Local has not submitted a demand to bargain and a complete set of written proposals within the required timeframes, the Department may implement the proposed change. This does not preclude the parties from discussion post-implementation.
- G. The Department will furnish VA space and equipment for these negotiations.
- H. At the local level, the Parties have the mutual obligation to timely bargain in good faith. To that end, it is the expectation of the Parties to normally complete the bargaining process within 21 calendar days. Normally, bargaining will take place three days a week, from 8 a.m. to 4:30 p.m., with break and meal times mutually determined by the Chief Negotiators. However, the local Parties are free to negotiate different dates, places and times for local level mid-term bargaining and will be respectful of any scheduling conflicts. If at the end of the 21 calendar days the Parties have not reached agreement, the Parties will either mutually agree to continue bargaining or contact the FMCS for assistance, as appropriate. Contact to the FMCS may be done individually or jointly by the Parties.

- I. The Parties may mutually agree to develop and use more specific ground rules through local negotiations.
- J. Local travel for any of the negotiators will be paid consistent with the Federal Travel Regulations.
- K. Extensions or reductions of any timeframes in this Section will be made by mutual agreement.
- L. No official electronic recording or verbatim transcripts will be made during the negotiations. However, each Party may make and keep its own notes and records.
- M. The Party requesting a caucus will leave the bargaining room to caucus in a room provided by the Department. There is no limit on the number of caucuses which may be held but each Party will make every effort to restrict the number and length of caucuses.
- N. Cell phones and other electronic devices will be placed on vibrate mode.
- O. The Chief Negotiator for each Party will initial each section as tentatively agreed. There is no final agreement until all proposals have been signed.
- P. In addition to the requirements in Part B, Section 7H above, at any time during the negotiations, if the Parties are unable to reach agreement through this effort, either Party may request assistance from the FMCS.

### **Section 8 – Legislative, Executive or Judicial Branch Changes in Bargaining Rights**

In the event that the scope of bargaining currently available is expanded or diminished due to a change in law or government-wide regulation, the Parties may by mutual consent reopen the Master Agreement by the submission of a complete set of proposals addressing the specific Article(s) affected. Such negotiations shall be strictly limited to those areas for which the scope of bargaining has been specifically broadened or diminished.

### **Section 9 – Impasse**

The Parties shall resolve impasses pursuant to the provisions of 5 USC 7119.

### **Section 10 – Information Requests and Bargaining Proposals**

A. As provided above, when the Department provides notice of a proposed change it will also simultaneously provide a copy of all necessary and relevant documents, if any, upon which it relied in proposing the change. During the mid-term bargaining process, the Union has a right to request information under the Statute consistent with 5 USC 7114(b)(4). Where the Union has submitted a request for information regarding a proposed change prior to their deadline for the submission of the demand to bargain and a complete set of written proposals, the Department will, unless prohibited by law, provide data consistent with the Statute:

1. Which is normally maintained by the agency in the regular course of business;

2. Which is reasonably available and necessary for full and proper discussion, understand and negotiation of subjects within the scope of collective bargaining; and
  3. Which does not constitute guidance, advice, counsel or training provided for the management officials or supervisors related to collective bargaining.
- B. The Parties agree that data requests will be prudent and necessary to respond to proposal(s). The request will specify the particularized need for the information. When the Department receives a data request, the Department will respond to the Union, stating that the request was received and provide an estimate as to the reasonable amount of time necessary to process the request. If the information is provided prior to their deadline for the submission of the demand to bargain and a complete set of written proposals, bargaining will commence according to the terms of this Article. However, in all cases when data is provided after the deadline, the Department will provide an appropriate amount of time, normally seven calendar days, based on the complexity of the issue and the amount of material requested and provided, for the Union to review the information and to submit a complete set of written proposals based on this additional information.
- C. The Department will make a good faith effort to respond as quickly as practicable.

## **ARTICLE 14 – LOCAL AGREEMENTS**

### **Section 1 – Limitations**

- A. Local supplemental agreements (herein "LSA") and other previously negotiated local agreements or past practices that pre-exist the new Master Agreement (herein "MA") shall expire.
- B. Any term in a LSA negotiated pursuant to this Article shall not delete, modify, or conflict with any provisions in the MA. Additionally, the local Parties may not negotiate over any matters covered by the MA unless the MA specifically allows for such negotiations.
- C. Consistent with this Article, either party has 180 calendar days or the completion of the joint training, whichever comes first, to provide notice to open negotiations or renegotiations for a local supplemental contract.

### **Section 2 – Other Previously Locally Negotiated Agreements and Local Supplementation**

- A. Within 30 days of providing notice for local supplemental bargaining, the requesting party will bring forward any existing LSA, other known locally negotiated agreements (i.e. MOUs) and past practices to the Chief of Human Resources or Local President (as applicable) and the local Parties will jointly compare them to the MA to identify conflicts.
- B. Previous existing memoranda of understanding and past practices where there is no conflict with the MA can be brought forward for any local supplementation negotiations. The local Parties will either jointly add these to new LSA without additional bargaining or bargain in good faith and the newly negotiated terms will become part of the new LSA.
- C. Those provisions of other local agreements and past practices that conflict with the MA will no longer be in effect.

### **Section 3 – National Mid-Term Changes and Local Agreements**

In the event that the Department makes a mid-term change at the national level, and the local Parties have a local supplemental agreement or other local agreement involving an issue related to that change, the Parties will meet all bargaining obligations at the national level and any local agreement will be consistent with, or superseded by, the nationally negotiated change.

## **ARTICLE 15 – HOURS OF WORK**

### **Section 1 – General**

Consistent with 5 USC 6121(3), 5 CFR Part 610 basic work requirement means the

number of hours, excluding overtime hours, that an employee is required to work or is required to account for by leave or otherwise.

## **Section 2 – Establishing Work Schedules**

- A. For Title 5 and Hybrid Employees the administrative workweek is established as the seven-day calendar week beginning at 0001 Sunday and ending at 2400 Saturday. The basic workweek will normally consist of five eight-hour days. Whenever possible the Department will give employees two consecutive days off. The Department will consider requests from employees for other than consecutive days off. Schedules will be established in accordance with law and government-wide regulations.
- B. A change in the administrative workweek and changes in the regularly scheduled administrative workweek are considered changes in conditions of employment. When a duty to bargain exists, the Department will give notice and bargain consistent with Article 13 - National Consultation Rights and National Consultation Rights and Mid-Term Bargaining, of this Agreement.
- C. If bargaining unit employees are covered by a specific law, government wide regulation or VA regulation regarding hours of work and work schedules (for example, physicians, firefighters and personnel covered by the Baylor Plan), those laws and regulations will be controlling, including but not limited to 5 USC 6101, 5 CFR, part 610 and VA Handbook 5011.
- D. Title 38 Medical Professionals
  - 1. In order to provide educational information on hours of work and overtime for Title 38 employees, the Parties reference VA Directives and Handbooks, which are not negotiated in this Agreement. With respect to employees in occupations listed under 38 USC 7401 (1), the terms of this Article are subject to and consistent with 38 USC 7422, which exempts from collective bargaining matters concerning or arising out of professional conduct or competence (meaning direct patient care and/or clinical competence), peer review, or the establishment, determination or adjustment of employee compensation.
  - 2. Scheduling of Title 38 medical professionals is an issue of direct patient care and clinical competence. Accordingly, the provisions of this Article shall be interpreted as subject to and consistent with, and to allow for exceptions within, the Department's discretion to schedule medical professionals consistent with changing patient care needs.

## **Section 3 – Work Schedule Options – Alternative Work Schedules (AWS)**

- A. In accordance 5 USC 6120, the Parties agree that the use of flexible and compressed work schedules has the potential to improve productivity in the Department and provide greater service to the public and care of the veterans.
- B. This section sets forth the procedures to be followed for Alternative Work Schedule (AWS), including flexible and compressed work schedules and the earning and use of credit hours. AWS means a schedule other than the traditional eight-hour tour of duty. Flexible Work Schedule (FWS) and Compressed Work

Schedule (CWS) are included within the definition of an AWS. Credit hours are included under the term flexible work schedule.

- C. The decision to establish or terminate an AWS program shall be done consistent with law, regulation and this Agreement. If the Department makes changes to an existing AWS it will give notice and an opportunity to bargain consistent with Article 13 - National Consultation Rights and Mid-Term Bargaining. In locations where there is no established AWS program the Local or an employee may request that the department establish an AWS program. However, the Parties understand that this does not obligate the Department to negotiate subjects covered by 5 USC 7106(b)(1).
- D. It is the right of the Department to determine whether to establish AWS programs. Once established, the Department will implement its AWS programs in a way that will not impact the operational needs of the work unit.
- E. All new employees or rehires shall be given the opportunity of requesting participation in an established AWS. Eligible employees will not be precluded from requesting to participate in AWS based solely on their positions.
- F. When an employee makes a request to work an AWS, the Department will consider all factors including the operational needs of the employee's work unit and the interests of the employee before making a decision. Additionally, in determining whether to grant or deny an employee's request for an AWS, the Department also may consider any factors that are pertinent to the request including things such as whether the employee:
  - 1. Is on a performance improvement plan;
  - 2. Has significant performance weaknesses communicated to the employee in writing;
  - 3. Has documented time or attendance issues;
  - 4. Is undergoing training in a new job;
  - 5. Is serving a probationary period; or,
  - 6. Had a disciplinary or adverse action in the preceding 12 months.
- G. The decision to establish or terminate an AWS program shall be done consistent with law, regulation and this Agreement. However, the Parties understand that this does not obligate the Department to negotiate subjects covered by 5 USC 7106(b)(1).
- H. Flexible Work Schedule
  - 1. Under 5 USC 6122, a FWS includes designated hours (core hours) and days when employees must be present for work. A FWS also includes designated hours during which an employee may request to work in order to complete the employee's basic workweek, as defined above. Overtime compensation for FWS

will be paid in accordance with all applicable laws and government wide regulations. The Department may vary the types of FWS in order to meet specific operational needs.

2. Consistent with 5 USC 6122(a)(2), flexible hours (also referred to as "flexible time bands") are the times during the workday, workweek, or pay period within the tour of duty during which an employee covered by a FWS may choose to vary his or her times of arrival to and departure from the work site consistent with the duties and requirements of the position and the operational needs of the Department.
3. "Modified Flex-tour" is a type of flextime where an employee selects a starting time within the established flexible time band. This establishes the employee's assigned schedule; however, the employee is allowed 15 minutes flexibility on either side of the selected arrival time. For example, an employee selecting 7:30 a.m. as a starting time under modified flex-tour, may report for work any time between 7:15 a.m. and 7:45 a.m. Changes in starting time must be approved by the supervisor.
4. "Flex-in/flex-out" is a type of flextour where employees working a flexible schedule will be allowed to flex out (leave the worksite) and flex in (return to the worksite) during the workday, subject to supervisory approval. If a combination of an employee's starting time and the amount of time the employee is away from the worksite precludes the completion of a full workday prior to 6:00 p.m., the employee will be placed in the appropriate leave category at his or her request or charged absent without leave, as appropriate.

#### I. Compressed Work Schedule

1. A CWS is a schedule that allows an employee to complete his or her required duty hours in fewer than ten workdays in a pay period consistent with 5 USC 6122 and approved by the Department.
  - a. Full time employee: An 80-hour biweekly basic work requirement that is scheduled for less than ten workdays.
  - b. Part time employee: A biweekly basic work requirement of less than 80 hours that is scheduled for less than ten workdays and that may require the employee to work more than eight hours in a day or more than 40 hours in a week.
2. Typical Types of Compressed Schedules
  - a. "5-4-9" is a work schedule that includes eight workdays of nine hours each, plus one workday of eight hours within the biweekly pay period.
  - b. "4-10" is a work schedule that includes eight workdays of ten hours in each biweekly pay period.
  - c. "6-12-8" is an eighty-hour bi-weekly basic work schedule that includes six 12-hour workdays and one eight-hour workday.

J. Requests For or Changes To an Established AWS:

1. Each employee desiring to work under an established AWS plan must submit a written request to his or her supervisor for a decision. The Department shall act upon these requests as soon as practicable, but generally no later than 30 calendar days after the request is made. If a decision cannot be made within the 30 days, the Department will explain to the Local and the employee why it needs additional time along with the date when a decision can be provided. If the request is denied the Department will explain in writing the reasons for the denial. Upon request, a sanitized copy will be provided to the Local. Decisions on an AWS will be made consistent with this Article. Employees already established in an AWS will not be required to file a new request for each pay period.
2. All new employees or rehires shall be given the opportunity of requesting participation in an established AWS plan.
3. Any conflicts in scheduling will be resolved by seniority consistent with Article 60 - Seniority.
4. An employee may submit a written request to change his or her established AWS. The employee must provide at least 30 calendar days notice of the proposed change. If approved, the employee's new schedule will begin with the next full pay-period after approval. In the event of denial, the Department will provide the employee with reasons for the denial in writing.

K. Credit Hours

1. Credit hours are any hours within a flexible schedule established under 5 USC 6122 which are in excess of an employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or workday. Employees on CWS and employees who are paid on a daily basis are not eligible for credit hours.
2. Employees on a FWS will not be precluded from requesting to earn credit hours based solely on their position.

L. Earning and Using Credit Hours – In accordance with 5 USC 6126, credit hours will be earned and used as stated below:

1. To be eligible to earn credit hours, employees must be on approved flexible work schedules.
2. Credit hours may be earned in 1/4-hour increments and may be used in 1/4-hour increments.
3. The maximum number of credit hours which a full-time employee may carry over from pay period to pay period is 24 hours. A part-time employee may not carry over more than one quarter of the hours in his or her basic bi-weekly work scheduled from pay period to pay period.

4. When an employee ceases to work in a work unit where credit hours may be earned, the employee shall be given the following options:
  - a. When possible, advanced notice to use earned credit hours will be given prior to leaving the work unit;
  - b. Compensation for the earned credit hours at the employee's current rate of basic pay; or,
  - c. Transfer of the earned credit hours to the new work unit, if credit hours have been authorized for that work unit. However, credit hours will not be transferred between VA facilities and other Federal Agencies.
5. An employee's written request to earn credit hours must be approved in advance and in writing by the Department. This request will be submitted to the appropriate approving official or designee. The request shall be documented approved or denied by this official as soon as practicable.
6. Nothing shall preclude an employee from requesting to earn and use same day credit hours.
7. An employee's written request to use credit hours must be approved in advance and in writing by the Department. This request will be submitted to the appropriate approving official or designee. The request shall be documented approved or denied by this official as soon as practicable. The Department's decision regarding an employee's request to earn and use credit hours will be based on operational needs, including the operational needs of the employee's work unit and if that work can be performed at the requested time.

M. Adverse Agency Impact, Termination and Suspensions of AWS

1. The Department may temporarily suspend or terminate an AWS program only if there is an "adverse agency impact" in accordance 5 USC 6131. "Adverse agency impact" means a reduction of the productivity of the agency; a diminished level of services furnished to the public by the agency; or an increase in the cost of agency operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule).
2. If the Department, nationally or at the VISN level, determines the AWS program should be terminated based on adverse agency impact, the Department may reopen this Article to negotiate termination. The AWS may not be terminated until:
  - a. This Article is renegotiated or expires or terminates pursuant to the terms of this Agreement; or,
  - b. The date of the Federal Service Impasses Panel (Panel) final decision, if an impasse arose in the reopening of this Article and if the Panel ruled in the Department's favor.

3. If an individual work unit within a local facility decides to terminate its AWS program(s), the unit must demonstrate an adverse agency impact prior to terminating the program. If the Local does not believe that there is an adverse agency impact, the issue may be referred to the Panel for a determination consistent with 5 USC 6131(c)(3)(C). The work unit will not terminate the AWS program until the Panel makes a final decision regarding the adverse agency impact. If the Panel determines there is no adverse agency impact the AWS may not be terminated.
4. Temporary Suspension – The Department may terminate or temporarily suspend an employee’s participation in an AWS if the Department finds that:
  - a. The employee’s performance has declined;
  - b. The employee fails to accurately report time worked;
  - c. The employee has documented time or attendance issues; or,
  - d. The operational needs, including operational needs of the employee’s work unit, require a change to accomplish necessary work assignments.
5. Where practicable, the Department will give an employee 30 calendar days advanced notice of termination or temporary suspension of the employee’s AWS.
6. Normally, a single infraction of a minor nature for one of the topics covered in a-c above does not warrant removal from an AWS.
  - a. Consistent with the procedures of this Article, employees may reapply for AWS participation 30 calendar days after removal from the program, provided that all deficiencies have been corrected. The approving official has the discretion to approve the application or delay approval until the employee has shown that the deficiencies have been corrected. The employee is strongly encouraged to speak with the approving official about their progress while not participating in AWS.
  - b. Employees may grieve in accordance with Article 40 - Grievance Procedure any decision to temporarily suspend or terminate their right to work AWS.

N. Special Provisions for Suspension of CWS

1. CWS may be suspended when employees are attending and/or conducting training with beginning and ending times which would conflict with their CWS schedule.
2. An employee will continue to participate in the CWS plan while in travel status unless there is a need to change the work schedule; for example, the hours of operation at the travel site differ from those of the employee.

O. Miscellaneous

1. Consistent with the law, government-wide regulations, this Agreement and any

applicable VA regulations, a union representative may request to earn credit hours to participate in Department initiated meetings occurring before or after the employee's regular work day.

2. When an employee is under an AWS and is relieved or prevented from working on a day designated as a holiday, the employee will be paid consistent with law and regulation, including but not limited to 5 USC 6103 and 5 CFR 610.406.

P. AWS Requirement for Time-Accounting Methods

1. Consistent with 5 CFR 610.404, any component of the Department that authorizes a FWS or CWS under 610.404 shall establish a time-accounting method that will provide affirmative evidence that each employee subject to the schedule has worked the proper number of hours in a biweekly pay period.
2. The arrival and departure times will be recorded for each employee, in any work unit using flexible work schedules. A Time and Attendance Report (VA Form 5631 or an electronic time and attendance system authorized for use in VA) must be used as the official means to record, certify and report employees' time and attendance, including the accumulation and use of credit hours, if applicable.
3. When the employee's work schedule is the same as that of the timekeeper's or the Department official's, no documentation, other than the Time and Attendance Report or electronic system, will be used to record employee attendance. When the employee's work schedule varies from that of the Department official, the Department will determine some other method to provide reasonable assurance of employee attendance, such as:
  - a. Observation by another official;
  - b. Occasional telephone calls to the employee when the employee is scheduled to be on duty; or,
  - c. Determining reasonableness of work output for time spent.
4. Sign-in/sign/out sheets, including VA Form 5283, Weekly Attendance Record (Flexitime) will not be used to document employee attendance. In rare situations, such as to record the attendance of employees, with attendance problems, alternative methods may be used to document attendance. These may include logging on to a computer terminal, reporting in to an official on duty, or a personal log maintained by the employee. Alternate reporting requirements should be limited to specific time periods and designated in writing.
5. If the Department elects to use a method in subsection P above or a different time accounting method for employees on an AWS, the Parties will bargain consistent with Article 13 - National Consultation Rights and Mid-Term Bargaining.

**Section 4 – Tours of Duty/Scheduling**

- A. For the purpose of this section, these definitions of terms are used:

1. Established Tour – A tour of duty approved with a specific beginning and ending time.
  2. Work Shift – 1st (days), 2nd (evenings), 3rd shift (nights) within 24-hour period.
- B. Subject to and consistent with 5 USC 6101, 38 USC 7422 and VA Handbook 5011, Part II, Chapter 3:
1. An employee’s regularly scheduled administrative workweek will usually not extend over more than five days of the period Sunday through Saturday.
  2. The Department will not schedule an employee to work more than two of the established work shifts, changing on one occasion, within any seven consecutive day period unless the employee makes a written request or the Parties locally agree to an alternative arrangement consistent with Article 13 - National Consultation Rights and Mid-Term Bargaining.
- C. Except in emergencies, as declared by the Medical Center Director, employees will not be required to report to work unless they have had at least 12 hours off-duty time between different work tours. Exceptions may be made with the approval of the employee and supervisor. This will not preclude work on an overtime basis. “Emergencies” under this section include situations in which the Department determines that patient care needs require scheduling of Title 38 medical professionals for duty without 12 hours off-duty time between tours, consistent with law.
- D. Rotation – The Department will schedule the rotation of off-tours consistent with valid operational or patient care needs. Rotation of off-tours will be fair and equitable among affected, qualified employees. The Department will request volunteers with the most senior given priority. If no volunteers, off-tours will be rotated beginning with the least senior qualified employee. Seniority is defined in Article 60 - Seniority.
- E. Employees may request a specific, established tour. In the event that multiple employees request the same available tour and the Department determines that the employees are comparably qualified to perform the tour, seniority, as defined in Article 60 - Seniority, will be the determining factor. Additional procedures not covered in this section may be bargained locally.
- F. Rotation of Weekends:
1. The Department will schedule the rotation of weekends consistent with law, government-wide regulations and valid operational needs.
  2. Rotation of weekends within a group may be a subject for local bargaining. This locally negotiated procedure will be applied in an equitable manner.
  3. In the event that the local parties choose not to negotiate a procedure, the rotation of weekends within a group will be done impartially and evenly balanced. In the event that the Local believes that local management is not applying this

process in an equitable manner, the Local may request management to explain how the rotation was applied and grieve consistent with Article 40 - Grievance Procedure.

4. The weekends are defined as Saturday and Sunday and may be expanded, at the Department's election, to include Friday or Monday when scheduling permits.

G. Rotations of Holidays:

1. The Department will schedule the rotation of holidays consistent with law, government-wide regulations, valid operational needs and Master Agreement. Consistent with Article 17 - Time and Leave, during the period of January 1<sup>st</sup> through February 1<sup>st</sup>, employees are free to volunteer to work any holidays in the leave calendar of May 1<sup>st</sup> through April 1<sup>st</sup>. After April 30<sup>th</sup>, the third and final posting for the planned annual leave calendar, employees are free to volunteer for holidays by notifying his or her supervisor. When employees volunteer, this will be documented on the voluntary holiday roster.
2. Rotation of holidays within a group may be a subject for local bargaining. This locally negotiated procedure will be applied in an equitable manner.
3. In the event that the local parties choose not to negotiate a procedure, the rotation of holiday within a group will be done impartially and evenly balanced. In the event that the Local believes that local management is not applying this process in an equitable manner, the Local may request management to explain how the rotation was applied and grieve consistent with Article 40 - Grievance Procedure.
4. Upon request, the Department will provide copies of schedules of weekend and off tours.

H. The Department and the Local may evaluate excessive use of overtime for the purpose of reviewing scheduling options.

- I. Approved shift schedules and areas of assignment will be posted at least 30 days in advance. Every effort will be made to assure that shift schedules will not be for more than six consecutive days for eight-hour tours, three consecutive days for 12-hour tours, and four consecutive days for ten-hour tours, with no less than two consecutive days off. This does not, however, relieve the Department of its obligation to change a Title 5 and hybrid employee's regularly scheduled administrative workweek, in advance of the administrative workweek, to correspond with work requirements (see 5 CFR 610.121(b)). Changes in work schedules will not be made without notifying the employee and the Local 30 calendar days in advance unless the change in scheduling is due to an emergency, in all such cases, the employee and union will be provided with the reason for the emergency as soon as management becomes aware of such emergency. The Parties are encouraged to explore self-scheduling.
- J. When change of uniform is required at the workplace, the Department will provide ten minutes at the beginning and end of the employee's tour to change clothes. In addition, employees will be allowed a reasonable amount of time to change clothes when their

clothing becomes soiled.

- K. The Department will permit reasonable clean-up time at the end of each shift for the purpose of returning tools and cleaning up the work areas and machinery, as necessary in each work area. No employee shall be required to remain after the end of his or her shift for the purpose of cleaning up his or her designated area, without appropriate compensation.

### **Section 5 – Paid On-Call/Standby Duty**

#### **A. Title 5 Employees and Hybrids Not Earning On-Call Pay Pursuant to 38 USC 7454:**

1. Paid on-call and standby duty will be rotated among all qualified staff. Records of paid on-call and standby duty shall be kept by the Department and made available to the Local upon request. Employees scheduled for paid on-call duty shall be issued pagers or other mobile technology which will be used to notify them of a need for their return to duty.
2. On-call employees shall not be expected to work more than 16 consecutive hours of actual work, except in rare and unusual circumstances. Such circumstances will be noted and shared with the employee and the local upon request.
3. Employees will not be required to stay at home unless they are in a standby duty status (5 CFR 550.141) or required to wear and respond to beepers/pagers unless they are scheduled to be in an on-call duty status under the provisions of 38 USC 7457.
4. Employees shall not be scheduled on-call while on annual leave.
5. On-call employees will not be utilized for non-emergency work. Supervisors should not require the employee to perform "busy work" just to keep the employee at work for a full two hours. This Section is not intended to open for debate whether or not the official who called the employee in for work was correct in his determination that an emergency need was present.
6. If an on-call or standby tour of duty is terminated in a work unit, the decision and reason shall be specific and in writing and forwarded to the employee and the Local to fulfill bargaining obligations.
7. Employees who are eligible for standby pay under 38 USC 7457(c) will be paid pursuant to that Statute.

#### **B. RNs, CRNAs, PAs, EFDAs, and Hybrids earning on-call pay under 38 USC 7453 (h) or 7454:**

1. Nurses and Nurse Anesthetists earn premium pay at 10% of their overtime rate for officially scheduled on-call duty pursuant to 38 USC 7453(h). Physicians Assistants and Expanded-Function Dental Auxiliaries earn premium pay on the same basis as nurses for officially scheduled on-call duty pursuant to 38 USC 7454(a). Other hybrid employees may earn premium pay on the same basis as

nurses for officially scheduled on-call duty pursuant to 38 USC 7454(b).

2. Procedures relating to on-call duty for employees covered by B1 above are contained in VA Handbook 5007, Part V, Chapter 5, Paragraph 1. This paragraph is purely for informational purposes.
3. Paid on-call duty will be rotated among competent staff. Records of on-call duty shall be kept by the Department and made available to the Local upon request. Employees scheduled for paid on-call duty shall be issued pagers or other mobile technology, which will be used to notify them of a need for their return to duty.

### **Section 6 – Voluntary On-Call Duty**

In the event the local facility institutes or changes a policy or procedures on voluntary on-call duty, the local parties will bargain consistent with Article 13 - National Consultation Rights and Mid-Term Bargaining.

### **Section 7 – Lunch Period and Breaks**

- A. The Department will continue the existing lunch and break arrangements. If the Department determines that an adjustment to lunch or breaks is necessary based on operational needs the Local will be provided notice and be given the opportunity to bargain on such changes in working conditions, in accordance with Article 13 - National Consultation Rights and Mid-Term Bargaining of this Agreement.
- B. A rest period of 15 minutes duration will be allowed each employee during each four hour period worked.

- C. Rest periods will not be added to periods of leave or the beginning or end of the employee's tour of duty or meal breaks.
- D. The Department will not restrict employee mobility during rest breaks, except in situations that require the employee's presence.
- E. Within the confines of the work area, reasonable space for the break will be made available where feasible and changes will be negotiated consistent with Article 13 - National Consultation Rights and Mid-Term Bargaining.

## **ARTICLE 16 – OVERTIME**

### **Section 1 – General Overtime Provisions**

- A. Subject to and consistent with all federal laws, including but not limited to the Fair Labor Standards Act of 1938, as amended (29 USC 201, et seq.), the Federal Employees Pay Act (5 CFR Part 550, Part 551) and 38 USC 7422, 38 USC 7453, and 38 USC 7459. Consistent with law and VA regulations this article does not apply to physicians, dentists, podiatrists, chiropractors and optometrists.
- B. The Department reserves the right to determine the qualifications required to work overtime. The Department will determine the number of employees needed to work overtime.
- C. If the Department requires overtime, employees are entitled to receive overtime pay.
- C. Overtime work shall be paid in accordance with applicable laws and regulations including, but not limited to, 5 CFR Part 551, Sub-part E.
- D. The purpose of this Article is to establish a process for the distribution of overtime that is fair and equitable. When making determinations on overtime assignments, the Department will give consideration to such factors as the character of the work, qualifications or professional competencies (as determined by the Department), availability and organizational location of employees, knowledge of the particular type of work involved and health/fatigue limitations.
- E. Employees shall be paid differential and premium pay in addition to the overtime compensation in accordance with applicable laws and regulations.
- F. It is agreed that non-bargaining unit employees shall not be scheduled on overtime to perform the duties of bargaining unit employees for the sole purpose of eliminating the need to schedule bargaining unit employees for overtime.
- G. The Department shall make a reasonable effort to give the employee as much notice as possible when planned overtime is required. If an employee is mandated to work overtime and has a conflict regarding the mandated overtime, the Department will give due consideration to the employee's personal circumstances subject to the paramount requirement of fulfilling the mission of the Department. At the employee's request, the Department will endeavor to avoid mandated overtime exceeding four hours at the end of the employee's tour of duty.

- H. When the Department mandates unplanned overtime, employees are expected to work overtime. If an employee is mandated unplanned overtime, an employee may request release from an overtime assignment. The employee will be relieved when another qualified or competent employee (as determined by the Department) in the same work unit is readily available for the assignment and willing to work. The Department retains the right to direct an employee to work overtime consistent with Paragraph G above.
- I. Employees who are required to work overtime will be allowed to call at no cost and make necessary arrangements. This shall include but is not limited to dependent care arrangement and updates, medical appointments, classes and self- improvement commitments, etc.
- J. Those employees eligible by Title 5 or Title 38 can accrue and use compensatory time when approved by the Department. In accordance with 5 USC 2105, 5 USC 6122, 5 CFR 550.114 and 5 CFR 551.531, eligible employees may request in writing compensatory time off in lieu of premium pay for overtime work. The approving official will consider staffing and operational needs in the decision whether to approve compensatory time. Supervisors shall not require the above mentioned employees to take compensatory time in lieu of overtime pay. Appropriate officials or their designees, may, at the request of a GS or FWS employee on a flexible schedule, grant compensatory time off in lieu of overtime pay, whether such overtime hours are regularly scheduled, irregular or occasional in nature. If the employee does not request compensatory time off in lieu of overtime pay, or if the employee requests for compensatory time off in lieu of overtime pay is not granted, the employee shall be compensated for such overtime under the applicable statutory provisions.
- K. When the Department determines the need for voluntary overtime work, it is the discretion of the Department to offer voluntary compensatory time work, voluntary overtime work, or the option of either compensatory or overtime work. In each situation, it is the right of the employee to accept the offered work, decline or accept one of the two offered choices, as applicable.
- L. The Department shall, to the extent practicable, permit employees who earn compensatory time instead of overtime to use their compensatory time at the earliest time convenient to them within 26 pay periods. Normally, compensatory time off shall be granted before annual leave is approved. If annual leave would otherwise be forfeited, however, the annual leave shall be granted before compensatory time off. Any employee who is unable to use compensatory time within 26 pay periods will receive overtime pay instead.
- M. Employees who are called back to work for a period of overtime unconnected to their regularly scheduled tour or who work overtime on their day off, are entitled to a minimum of two hours overtime pay. Employees called in for emergency work outside their basic workweek shall not normally be required to perform non-emergency duties.
- N. When employees place their name on a voluntary roster, it is expected that the employee will perform the work when offered. Employees who do not perform the work (without just cause) may have their name moved to the bottom of the list, or be removed from the list for an appropriate period of time, to be determined by the Department at the local level after consultation with the Union.
- O. Overtime will be paid in 15 minute increments.

- P. Rosters of employees will be utilized to determine overtime, voluntary or mandatory. The Department will maintain records of overtime assignments in accordance with applicable laws and will, upon request, make the records available to the Local.
- Q. Employees required to work through their non-duty meal period shall be paid for such time.
- R. In the event of an extension of a regular tour of duty into an evening or night work shift for more than a three hour overtime work period, reasonable time will be allowed, when possible, for procurement and eating of food no later than three hours after the overtime starts. Employees not released from duty while eating will be compensated.

## **Section 2 – Special Rules for Overtime Duty for Nursing Staff**

- A. Voluntary and involuntary overtime for nursing staff is governed by 38 USC 7459 and applicable Department regulations. Any language in this section regarding 38 USC 7459 is being provided for informational purposes only.
- B. Nursing Staff Defined — In this section, the term “nursing staff” includes the following:
  - 1. A registered nurse.
  - 2. A licensed practical or vocational nurse.
  - 3. A nurse assistant appointed under this chapter or title 5.
  - 4. Any other nurse position designated by the Secretary for purposes of this section.
- C. Voluntary Overtime – Consistent with 38 USC 7459, except as provided below in Section 3, the Department may not require nursing staff to work more than 40 hours (or 24 hours if such staff is covered under 38 USC 7456) in an administrative work week or more than 8 consecutive hours (or 12 hours if such staff is covered under 38 USC 7456 or 38 USC 7456A). Involuntary overtime is covered in Section 3 below.
  - 1. Nursing staff may on a voluntary basis elect to work hours otherwise prohibited in section A, above.
  - 2. The refusal of nursing staff to work hours prohibited by C above, shall not be grounds:
    - a. To discriminate (within the meaning of section 704(a) of the Civil Rights Act of 1964) against the staff;
    - b. To dismiss or discharge the staff; or,
    - c. For any other adverse personnel action against the staff.
- D. Employees under this section will utilize the following provisions for voluntary overtime:
  - 1. Employees may voluntarily place their names on rosters that will be used when overtime opportunities become available.

2. The Department reserves the right to determine qualified staff to be solicited for voluntary overtime.
3. Seniority is defined by Article 60 - Seniority, of this Agreement.
4. A volunteer roster will be maintained on each unit for each employee type (e.g. one list for both LPNs and LVNs). The roster will include the names of the employees desiring to perform overtime work. The unit roster will be set up by seniority beginning with the most senior employee. The names of new employees assigned to the unit will be added by seniority. As employees work voluntary overtime, or are offered the opportunity to work overtime and refused, the date will be entered on the roster.
5. Volunteers to work overtime will first be solicited from those employees from the unit to which they are assigned. If there are more volunteers than overtime opportunities, the roster will be used, regardless of compensation requested.

E. Administering an overtime roster:

1. An employee who works overtime is not eligible again until the other available employees on the list have had an opportunity to work overtime.
2. If an employee is not available to be solicited for overtime, the next person on the list will be asked.
3. The person that was not available will be given the next overtime opportunity.

F. If there are no volunteers from the unit's roster, the overtime opportunity will be offered to other qualified employees on the master voluntary roster.

G. Additional procedures not covered in this section may be negotiated at the local level. Further, by mutual agreement, the local parties may negotiate a different procedure under this section.

**Section 3 – Mandatory Overtime Provisions for RNs (including Advance Practice Nurses), LPNs / LVNs, Nursing Assistants Appointed under Title 5 and Other Positions Designated by the Secretary of Veterans Affairs Pursuant to 38 USC 7459**

A. Consistent with 38 USC 7459, the Department may require nursing staff to work hours otherwise prohibited by Section 2 above if:

1. The work is a consequence of an emergency that could not have been reasonably anticipated;
2. The emergency is non-recurring and is not caused by or aggravated by the inattention of the Department or lack of reasonable contingency planning by the Department;
3. The Department has exhausted all good faith, reasonable attempts to obtain voluntary workers;
4. The nurse staff have critical skills and expertise that are required for the work; and,

5. The work involves work for which the standard of care for a patient assignment requires continuity of care through completion of a case, treatment or procedure.
- B. Nursing staff mandated to work consistent with A above may not be required to work hours after the requirement for a direct role by the staff in responding to medical needs resulting from the emergency ends.
- C. The Department reserves the right to determine qualified staff to perform mandatory overtime.
- D. Seniority is defined by Article 60 - Seniority, of this Agreement.
- E. Mandatory overtime rosters for each employee type (e.g. one list for both LPNs and LVNs) will be maintained on each unit. The process will be as follows:
  1. The unit roster will be set up by reverse seniority beginning with the least senior employee. The names of new employees assigned to the unit will be added by reverse seniority.
  2. Only employees on duty are eligible to be mandated.
  3. As employees work mandatory overtime, the date will be entered on the roster.
  4. If an employee is not available to be mandated, the next employee on the list will be mandated.
  5. The employee that was not available will be mandated for the next mandatory overtime.
- F. Additional procedures not covered in this section may be negotiated at the local level. Further, by mutual agreement, the local parties may negotiate a different procedure under this section.

#### **Section 4 – Overtime Provisions for all Employees Other than Nursing Staff**

- A. Employees under this section will utilize the following provisions for voluntary overtime:
  1. An employee may voluntarily place his or her name on a roster that will be used when overtime opportunities become available in his or her service or section.
  2. The Department reserves the right to determine qualified staff to be solicited for voluntary overtime.
  3. Seniority is defined by Article 60 - Seniority, of this Agreement.
  4. A volunteer roster will be maintained for each service or section. The roster will include the names of the employees desiring to perform overtime work. The section or service roster will be set up by seniority beginning with the most senior employee. The names of new employees assigned to the service or section will be added by seniority. As

employees work voluntary overtime, or are offered the opportunity to work overtime and refused, the date will be entered on the roster.

5. If there are more volunteers than overtime opportunities, the roster will be used, regardless of compensation requested.
6. Administering a voluntary overtime roster:
  - a. An employee who works overtime is not eligible again until the other available employees on the list have had an opportunity to work overtime.
  - b. If an employee is not available to be solicited for overtime, the next person on the list will be asked.
  - c. The person that was not available will be given the next overtime opportunity.
- B. Additional procedures not covered in this section may be negotiated at the local level. Further, by mutual agreement, the local parties may negotiate a different procedure under this section.

### **Section 5 – Mandatory Overtime Provisions for all Employees other than Nursing Staff**

- A. The Department reserves the right to determine qualified staff to perform mandatory overtime.
- B. Seniority is defined by Article 60 - Seniority, of this Agreement.
- C. Mandatory overtime rosters will be maintained by each section or service. The process will be as follows:
  1. The section or service roster will be set up by reverse seniority beginning with the least senior employee. The names of new employees will be added by reverse seniority.
  2. As employees work mandatory overtime, the date will be entered on the roster.
  3. If an employee is not available to be mandated, the next employee on the list will be mandated.
  4. The employee that was not available will be mandated for the next mandatory overtime.
- D. Additional procedures not covered in this section may be negotiated at the local level. Further, by mutual agreement, the local parties may negotiate a different procedure under this section.

## **ARTICLE 17 – TIME AND LEAVE**

### **Section 1 – General**

- A. Employees will accrue and use sick and annual leave in accordance with applicable laws, government-wide regulations, VA regulations, and this Agreement.
- B. All leave charges shall be in increments of one-quarter hour except for employees in E below.
- C. Employees should request, in advance, approval of anticipated leave.
- D. Leave will only be approved or denied in accordance with 5 CFR Part 630. Leave will not be denied for the purpose of disciplining an employee.
- E. The minimum leave charge for full-time physicians, dentists, podiatrists, chiropractors, and optometrists (appointed under 38 U.S.C. 7401, 7405 or 7306) is one calendar day and multiples thereof. When a scheduled day's work extends over portions of two calendar days, leave will be charged for the day on which the greater part of the day's work falls, or for the first day when the day's work is equally divided between 2 calendar days. No charge to leave will be made for absence of these employees on administrative non-duty days.
- F. No arbitrary or capricious restraints will be established to restrict when leave may be requested.
- G. When employees are required to use an electronic time and attendance system to request leave, they will be appropriately trained in the use of such system. If the electronic system is unavailable or not functioning employees will use a SF-71 to request leave.
- H. The Department may increase the stated limits applicable to all forms of leave in accordance with applicable government wide regulations and laws.
- I. All employees shall be excused or receive appropriate pay for all holidays prescribed by Federal law, and that may be added by Federal law, or that may be designated by Executive Order.
- J. If the Department proposes to change the automated time and attendance system, the Department will give notice and bargain in accordance with Article 13 - National Consultation Rights and Mid-Term Bargaining.
- K. Employees who use their leave in accordance with 5 CFR Part 630 will not be adversely affected in any employment decision solely because of their leave balances.

## **Section 2 – Annual Leave for Title 5, Hybrid and Title 38 Employees**

- A. Annual leave is provided to allow employees extended leave for rest and recreation and to provide periods of time off for personal and emergency purposes. All employees may request annual leave and take such leave subject to the Department's approval.
- B. Use of accrued annual leave is an absolute right of the employee, subject to the right of the Department to approve when annual leave may be taken.
- C. The Department will render timely decisions on employees' leave requests. Employees should submit requests as far in advance as possible.

### **Section 3 – Annual Leave Schedules for Employees Other Than Title 38 Registered Nurses**

- A. Employees under this section will earn and use annual leave in accordance with applicable laws, government-wide regulations and any VA policies.
- B. The provisions of this section are intended to be interpreted consistently with the Statute and 38 USC 7422.
- C. Consistent with management's right to assign work, employees in a work unit will submit leave requests only with other similar positions in that work unit (i.e. LPNs with LPNs, etc.) when there are two or more employees of the same occupations in a work unit.
- D. Annual Leave Schedule:
  - 1. The calendar year for the purpose of leave selection will be from May 1st through April 30. When there is a conflict of choices, the conflict will be resolved by the Department on the basis of seniority, as defined by Article 60 - Seniority.
  - 2. The annual leave schedule will be posted on the first administrative workday after January 1 and remain available for leave selection until February 1 of each year.
    - a. A list of employees ranked according to their relative seniority, as defined by Article 60 - Seniority, will be posted on the work unit next to the annual leave schedule.
    - b. Each employee will have the right to select a three-week vacation period, the weeks being separated or consecutive.
    - c. The approved schedule after the resolution of any conflicts will be posted by February 15th of each year.
  - 3. Each employee may then select one week by seniority, as defined by Article 60 - Seniority.
    - a. Second leave selection will remain available until March 15th. Conflicts of choices will be resolved by seniority, as defined by Article 60 - Seniority.
    - b. The approved schedule after the resolution of any conflicts will be posted by March 31st.
  - 4. Each employee may then select one week by seniority, as defined by Article 60 - Seniority.
    - a. The third leave selection will remain available until April 21st.
    - b. Conflicts of choices will be resolved by seniority.
    - c. The final approved schedule will be posted by April 30th.

- E. If the Department initiates a reassignment or detail, previously approved leave requests should be honored, except as provided in Section 3F of this Article.
- F. Previously approved annual leave may be cancelled if necessary to meet valid operational needs or other work requirements and if there is no other qualified and competent employee, as determined by the Department, who can perform the required duties. When previously approved annual leave is cancelled by the Department, the reasons will be explained to the employee and subsequently documented on the SF-71, if applicable, or in the VA's electronic time and attendance system.
- G. If an employee is reassigned upon his or her own request from one unit to another, the Department will make every effort, based on staffing requirements of the new unit, to honor previously approved leave requests except as provided in Section F of this Article.
- H. During the period of January 1st through February 1st, employees are free to volunteer to work any holidays from May 1st through April 1st of the following year. After April 30th of the current year, the third and final posting for the planned annual leave calendar, employees are free to volunteer for holidays by notifying his or her supervisor. When employees volunteer, this will be documented on the voluntary holiday roster.
- I. Unplanned Annual Leave
  - 1. Employees may request annual leave on as needed basis. All annual leave must be approved or denied by the appropriate Department Official.
  - 2. The Department will make sure that employees are able to contact an approving Official in cases where unplanned leave may be required.
  - 3. When employees submit a request for unplanned annual leave, the Department will provide the employees with a documented response approving or denying the leave as soon as practicable after the Department assesses whether the employees can be released from duty.
  - 4. In all cases where employees request unplanned leave the Department Officials will not intentionally delay providing a timely response.
- J. When an employee requests annual leave in conjunction with scheduled days off at the beginning or end of the leave period, The Department will not change the employee's days off except where necessary to meet operational needs and where there is no other qualified and competent employee, as determined by the Department, who can perform the required duties.
- K. Carryover of annual leave and restored leave will be addressed in accordance with applicable rules and regulations.
- M. The Department will allow the maximum number of employees to use leave in accordance with coverage requirement as determined by the Department.
- N. Where vacation schedules are used, the approved vacation schedule will be conspicuously posted and remain posted and be kept up-to-date for the leave year. Changes in the vacation schedule will be provided to the Local upon request.

- O. Leave requests previously approved prior to effective date of the new Agreement shall be honored consistent 3E, 3F, 3G, 3J.

**Section 4 – Annual Leave Schedules for Title 38 Registered Nurses (Including Advanced Practice Registered Nurses (APRN))**

- A. Registered nurses covered by this Agreement shall accrue and be entitled to such annual leave as provided for in established VA regulations.

- B. The provisions of this section are intended to be interpreted consistently with 38 USC 7422.

C. Annual Leave Schedule

1. The calendar year for the purpose of leave selection will be from May 1st through April 30. When there is a conflict of choices, the conflict will be resolved by the Department on the basis of seniority, as defined by Article 60 - Seniority.
2. The annual leave schedule will be posted on the first administrative workday after January 1 and remain available for leave selection until February 1 of each year.
  - a. A list of employees ranked according to their relative seniority, as defined by Article 60 - Seniority, will be posted on the work unit next to the annual leave schedule.
  - b. Each employee will have the right to select a three-week vacation period, the weeks being separated or consecutive.
  - c. The approved schedule after the resolution of any conflicts will be posted by February 15th of each year.
3. Each employee may then select one week by seniority, as defined by Article 60 - Seniority.
  - a. Second leave selection will remain available until March 15th. Conflicts of choices will be resolved by seniority, as defined by Article 60 - Seniority.
  - b. The approved schedule after the resolution of any conflicts will be posted by March 31st.
4. Each employee may then select one week by seniority, as defined by Article 60 - Seniority.
  - a. The third leave selection will remain available until April 21st.
  - b. Conflicts of choices will be resolved by seniority.
  - c. The final approved schedule will be posted by April 30th.

- D. If the Department initiates a reassignment or detail, previously-approved leave requests should be honored, except as provided in Section 4F of this Article.
- E. If a registered nurse is reassigned upon his or her own request from one unit to another, the Department will make every effort, based on staffing requirements of the new unit, to honor previously approved leave requests except as provided in Section 4F of this Article.
- F. Previously approved annual leave may be cancelled if necessary to meet patient care needs or other work requirements and if there is no other qualified and competent employee, as determined by the Department, who can perform the required duties. When previously approved annual leave is cancelled by the Department, the reasons will be explained to the registered nurse and subsequently documented on the SF-71, if applicable, or in the VA's electronic time and attendance system.
- G. Bargaining unit registered nurses will compete only with other bargaining unit registered nurses under this section.
- H. During the period of January 1st through February 1st, employees are free to volunteer to work any holidays from May 1st through April 1st of the following year. After April 30th of the current year, the third and final posting for the planned annual leave calendar, employees are free to volunteer for holidays by notifying his or her supervisor. When employees volunteer, this will be documented on the voluntary holiday roster.
- I. **Unplanned Annual Leave**
  - 1. Employees may request annual leave on as needed basis. All annual leave must be approved or denied by the appropriate Department Official.
  - 2. The Department will make sure that the employees are able to contact an approving Official in cases where unplanned leave may be required.
  - 3. When an employee submits a request for unplanned annual leave, the Department will provide the employee with a documented response approving or denying the leave as soon as practicable after the Department assesses whether the employee can be released from duty.
  - 4. In all cases where employees request unplanned leave the Department Officials will not intentionally delay providing a timely response.
- J. Leave requests previously approved prior to effective date of the new Agreement shall be honored consistent 4D, 4E and 4F.

**Section 5 – Tardiness for Title 5, Hybrid and Title 38 Employees (Excluding Physicians)**

Supervisors should excuse, without charge to leave, infrequent, brief periods of tardiness/absence if such tardiness/absence was for good cause. If the tardiness is not excused, the employee may request annual leave or leave without pay or be charged absent without leave. If the employee is charged annual leave, leave without pay, or absent without leave, the employee will not be permitted to work during the period covered by the leave or absent without leave. Unexcused tardiness of hourly employees will be charged in multiples

of a quarter of an hour. The Department shall afford all employees the opportunity to present the reason for tardiness prior to officially charging the employee absent without leave.

### **Section 6 – Sick Leave for Title 5, Hybrid and Title 38 Employees**

- A. Sick leave is an employee's earned benefit and will be granted to the employee for absences meeting the requirements of 5 CFR Section 630.401(a) (for Title 5 employees) or VA Handbook 5011, Part V, Chapter 3, which is not part of this negotiated agreement (for Title 38 employees).
- B. Consistent with 5 CFR Section 630.401(a), the Department must grant a Title 5 employee sick leave when the employee:
  - 1. Receives medical, dental or optical examination or treatment;
  - 2. Is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy or childbirth;
  - 3. Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by being present on duty after exposure to a contagious disease; or,
  - 4. Must be absent from duty for purposes relating to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.
- C. Consistent with VA Handbook 5011, Part V, Chapter 3, sick leave shall be granted to Title 38 employees when they are:
  - 1. Incapacitated for the performance of their duties because of personal illness, disease, injury, pregnancy and confinement;
  - 2. For necessary medical, dental or optical examination or treatment; or,
  - 3. When a member of the immediate family of the employee is afflicted with a contagious disease and requires the care and attendance of the employee; or,
  - 4. When through exposure to contagious disease, the presence of the employee at the post of duty would jeopardize the health of others.
- D. It is the responsibility of an employee who is incapacitated for duty to notify the immediate supervisor or designee (or to have a responsible person make the notification for the employee) at a designated VA number as soon as possible, but not later than two hours after the employee is scheduled to report for duty unless mitigating circumstances exist. The supervisor will not routinely request the nature of the illness.
- E. An employee whose sick leave balance does not cover the absence requested may request the substitution of any leave available to him or her in accordance with applicable laws and regulations. Such leave may be granted at the discretion of the supervisor.

- F. An employee who expects to be absent more than one day should inform the supervisor or designee of the expected date of return to duty and notify the supervisor of any change. In cases of extended illness, daily reports will not be required.
- G. The Parties will adhere to all laws and regulations as it is related to employees' rights to privacy regarding sick leave documentation.
- H. The Department should make an effort to accommodate employees who request, in advance, a change in work schedule to meet medical or dental appointments. Employees will make reasonable efforts to schedule medical, dental or optical examination or treatment appointments after working hours or on non-workdays.

## **Section 7 – Documentation of Sick Leave**

- A. Sick leave for three workdays or less may be approved without a medical certificate. However, when the leave approving official has reason to believe that the employee is not incapacitated for duty, the leave approving official may require medical certificates for any period of absence in accordance with 5 CFR 630, Subpart D.
- B. An employee requesting sick leave, for periods of illness of more than three consecutive work days must make an appropriate request and may be required to furnish evidence of the need for sick leave within a reasonable period of time after return to duty. Employees who are required to provide a medical certificate or other evidence of illness to justify a sick leave request will be carried in an Absence Without Leave (AWOL) status until acceptable medical documentation is provided. AWOL is not a disciplinary action. It is a non-pay status that may form the basis for a disciplinary action. Medical certificates or other evidence of illness which may be required will be submitted within 15 days after the employee's return to duty. If, due to circumstances beyond the control of the employee, he or she is unable to provide the documentation within 15 calendar days, the employee must provide the evidence or medical certification no later than 30 calendar days after returning to work. An employee who does not provide the required evidence within 30 calendar days is not entitled to sick leave in accordance with 5 CFR 630.405(b).
- C. An employee can justify the request for sick leave by the following:
  - 1. By medical certification from the Department's personnel physician or the employee's personal physician or health care professional;
  - 2. By the employee's own written statement in instances where the illness was not treated by a physician. The statement will indicate why a physician was not seen, for example, remoteness of area, nature of illness, or other specific reasons. The supervisor may request clarification should the employee's written statement not be sufficient to support the request.
  - 3. An employee with chronic medical condition that does not require medical treatment, but does result in periodic absences from work, will not be required to furnish a physician's certificate on a continuing basis if the employee:
    - a. Is not on leave restriction; and,

- b. Provides, if requested, an updated valid medical certificate every six months which clearly states the continuing need for periodic absences.
  - 4. Medical certification must include a statement that the employee was incapacitated for work and date(s) of the incapacitation. This will be considered sufficient for medical certification purposes. This applies to both sick leave of more than three days and certification for sick leave restriction. However, employees will not be required to reveal the nature of the illness or injury.
  - 5. Regardless of whether an employee has been placed on a formal medical certification requirement, if for any reason an employee's medical certificate or other evidence of illness furnished is not considered satisfactory, the Department may require the employee to provide additional evidence in support of the employee's request for sick leave for any period of absence in accordance with 5 CFR 630.405.
- D. Information or documents regarding an employee's absence for sick leave purposes are highly sensitive. The Department will ensure that they are maintained in a secure and confidential manner.

**Section 8 – Sick Leave for Family Care and Bereavement for Title 5 and Hybrid Employees (5 CFR 630.1201 et seq.)**

- A. For purposes of this Section, family member means any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- B. Employees covered by the Title 5 leave system may use up to 104 hours of sick leave (or in the case of a part-time employee, the number of hours of sick leave normally accrued in a leave year):
  - 1. To provide care for a family member who is incapacitated by a medical or mental condition or to attend a family member receiving medical, dental, or optical examinations or treatment;
  - 2. To make arrangements for and attend the funeral of such family member; or
  - 3. For purposes related to the adoption of a child by a family member. This may include:
    - a. Appointments with adoption agencies, social workers, and attorneys; court proceedings;
    - b. Required travel;
    - c. Any periods of time the adoptive parents are ordered or required by the adoption agency or by the court to take time off from work to care for the adopted child; and,
    - d. Any other activities necessary to allow the adoption to proceed. Sick leave may not be used by adoptive parents who voluntarily choose to be absent from work to bond with an adopted child.

- C. Employees covered by the Title 5 leave system may use up to 480 hours of sick leave (or, in the case of a part-time employee, 12 times the average number of hours in the employee's scheduled tour of duty each week) to provide care for a family member with a serious health condition. For the purposes of this paragraph, serious health condition has the same meaning as the definitions in 5 CFR 630.1202.
- D. If an employee previously has used any portion of the 104 hours of sick leave for general family care or bereavement purposes in a leave year, that amount must be subtracted from the 480 hour entitlement.
- E. If an employee has already used 480 hours of sick leave to care for a family member with a serious health condition, he or she cannot use an additional 104 hours in the same leave year for general family care purposes.
- F. Sick leave taken under this Section is subject to the certification requirements in Section 20 of this Article titled Family Medical Leave below.

**Section 9 – Sick Leave for Family Care and Bereavement for Title 38 Employees (5 CFR 630.1201 et seq.)**

- A. For purposes of this Section, family member means any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- B. Full-time Title 38 employees charged leave on a daily basis may take up to thirteen days of sick leave, and full-time employees charged leave on an hourly basis may take up to 104 hours of sick leave in a leave year, to:
  - 1. Provide care for a family member who is incapacitated by a medical or mental condition or to attend a family member receiving medical, dental, or optical examinations or treatment;
  - 2. Make arrangements for and attend the funeral of such family member; or
  - 3. For purposes related to the adoption of a child. This may include: appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; any periods of time the adoptive parents are ordered or required by the adoption agency or by the court to take time off from work to care for the adopted child; and any other activities necessary to allow the adoption to proceed. Sick leave may not be used by adoptive parents who voluntarily choose to be absent from work to bond with an adopted child.
- C. Leave taken pursuant to Paragraph A of this Section by employees on a 72/80 schedule must be multiplied by 1.111 when determining whether an employee has reached the 13-day or 104-hour maximum allotment in Paragraph A.
- D. Employees covered by the Title 38 leave system may use up to 480 hours of sick leave each leave year to care for a family member with a serious health condition, subject to the following limitations:

1. If an employee previously has used any portion of the 104 hours of sick leave for general family care or bereavement purposes in a leave year, that amount must be subtracted from the 480 hours entitlement.
2. If an employee has already used 480 hours of sick leave to care for a family member with a serious health condition, he or she cannot use an additional 104 hours in the same leave year for general family care or bereavement purposes.
3. Part-time employees and employees on uncommon tours of duty are also covered and may take up to an amount of sick leave equal to 12 times the average number of hours in his or her scheduled tour of duty each week during a leave year, subject to the following limitations:
  - a. If an employee previously has used any portion of sick leave for general family care or bereavement purposes in a leave year, that amount must be subtracted from the total number of available hours.
  - b. If an employee has already used the maximum amount of sick leave permitted to care for a family member with a serious health condition, he or she cannot use additional hours in the same year for family care or bereavement purposes.

E. Relation to Family and Medical Leave Act:

1. Sick leave under this Section does not count against an employee's entitlement under the Family and Medical Leave Act (5 USC 6381-6387) unless the employee notifies the leave approving official in advance of intent to substitute sick leave for leave without pay taken under the Family and Medical Leave Act.
2. For the purposes of this paragraph, serious health condition has the same meaning as the definitions in 5 CFR 630.1202.

F. Sick leave taken under this Section is subject to the certification requirements in Section 23 of this Article titled Family Medical Leave Act.

**Section 10 – Sick Leave Certification for Title 5, Hybrid and Title 38 Employees**

- A. When there is substantial justification that an employee is abusing entitlement of sick leave such as a pattern of sick leave usage that indicates the employee is not incapacitated or the usage is unsubstantiated a medical certificate may be required for any period of absence. The employee must be provided with the reasons in advance, in writing, why such requirement is being established in his or her case. All such cases requiring medical certification shall be reviewed not later than six months afterwards. Frequency or amount of leave used will not be the sole factor for determining sick leave abuse, nor will leave for which administratively acceptable medical documentation has been provided.
- B. When abuse ceases, the sick leave certification requirement will be removed, the record shall be made clean, and the employee will be notified of this action. The employee will also be notified of the reasons, in writing, if the certification requirements are to be continued.

## **Section 11 – Registration and Voting for Title 5, Hybrid and Title 38 Employees**

The Department agrees that when the voting polls are not open at least three hours, either before or after employees regular hours of work, employees will be granted an amount of excused absence to vote, or to register to vote, which will permit them to report to work three hours after the polls open or leave work three hours before the polls close, whichever requires the lesser amount of time. Under unusual circumstances, an employee can be excused up to a full day. Where release of an employee at the beginning or end of the day would seriously impair operations, the supervisor, to the extent possible, shall make other arrangements to allow the employee a reasonable amount of time during the workday to vote or register to vote.

## **Section 12 – Compensatory Time Off for Travel**

Employees will be entitled to compensatory time for time spent in travel, in accordance with 5 CFR 550 Subpart N – Compensatory Time Off for Travel.

## **Section 13 – Employee Absences for Court or Court-Related Services for Title 5, Hybrid and Title 38 Employees**

- A. Except as otherwise modified by applicable law, government-wide regulations, or other outside authority binding on the Department, an employee summoned or subpoenaed in connection with a judicial proceeding by a court or other authority responsible for the conduct of that proceeding, shall be authorized to attend the judicial proceeding without charge to leave or loss of VA salary in the following instances:
1. For jury duty;
  2. To appear as a witness on behalf of the Federal, District of Columbia, state, or local government;
  3. To appear as a witness on behalf of a private party in an official and job-related capacity or to produce official records;
  4. To appear as a witness on behalf of a private party in an unofficial capacity provided one of the parties to the proceeding is the United States Government, the District of Columbia, a State, or a local government;
- B. Even though compensation may be received for serving on jury duty in a Federal court, employees may not keep such compensation, but may only keep expense money received for mileage, parking, or required overnight stay. Monies received for performing jury duty in state or local courts are indicated on pay voucher(s) or check(s) as either “fees for services rendered” or “expense money.” “Expense money” may be retained by the employee; “fees for services rendered” must be submitted to the appropriate financial office.
- C. Days off or schedules will not be changed to avoid granting absence for court or court-related services.

- D. An employee who is granted court leave and is excused or released by the court for any day or substantial portion of a day is expected to return to the employee's regular VA duties except when:
  - 1. Only a small portion of the workday would be involved and thus no appreciable amount of VA service would be rendered;
  - 2. The distance from the court to the place of duty is such that this would be an unreasonable requirement; or,
  - 3. The regular tour of duty occurs at night.
- E. An employee who is granted court leave and serves for a full day or substantial portion of a day is not expected to report for work within 12 hours of the time the employee is released by the court.

#### **Section 14 – Leave Without Pay (LWOP) for Title 5, Hybrid and Title 38 Employees**

- A. LWOP is granted at the discretion of The Department, except in the following cases:
  - 1. When a disabled veteran requests LWOP for medical treatment for a service-connected disability;
  - 2. When requested by a reservist or National Guard member for military duties in accordance with appropriate military orders. Employees may request such leave after their military leave has been exhausted (38 USC 4316(d));
  - 3. When requested by an employee who has suffered an incapacitating job-related injury or illness and is waiting adjudication of a claim for employee compensation by the Office of Workers' Compensation Program; or,
  - 4. When an employee makes a request under the FMLA and meets the criteria for that program.
- B. LWOP may be requested in the same manner and for the same purposes as annual leave and sick leave. Granting LWOP is generally in the Department's discretion. However, LWOP may be granted even though the employee has a sick or annual leave balance.
- C. Upon written request from the Union, an employee may be granted leave without pay to engage in union activities on the national, regional or local level, to work in programs sponsored by the Union. Such requests will be referred to the appropriate Department official. Such employees shall continue to accrue benefits in accordance with applicable OPM regulations. LWOP for this purpose is limited to one year, but may be extended or renewed upon proper application.
- D. Upon return to duty after a period of LWOP, the Department will restore the employee to the position, which the employee held prior to the leave, or should no vacancy exist, to a similar position at the same grade and pay.
- E. Employees may request LWOP for educational purposes.

## **Section 15 – Hazardous Weather/Emergency Conditions for Title 5, Hybrid and Title 38 Employees**

- A. All employees of VA facilities provide critical services, and employees are required to be at work in emergency situations. Under certain circumstances the Department may excuse some of the employees.
- B. The Local shall be informed by the appropriate Department official at the time the facility declares hazardous weather/emergency conditions. The notification will be telephonic or e-mail.
- C. Early Dismissals: When the Department determines that emergency situations warrant, excused absence without charge to leave may be granted to employees who are in a duty status. Employees who are not in a duty status will be charged appropriate leave for the entire period of absence.
- D. When hazardous conditions (e.g., extreme weather conditions, serious interruptions in public transportation, earthquake and disasters such as flood, fire or other natural phenomena) arise, the Department will determine whether all or part of the facility should be closed or whether the facility should be open as usual. If the Department decides to close all or part of the facility during periods the facility would otherwise be open, the Department will notify employees whether telework in accordance with Article 18 - Telework, liberal leave or authorized absence will be authorized. Employees who are prevented from reporting to work due to the closure of all or part of a facility should be granted authorized absence or telework in accordance with Article 18 - Telework, OPM guidance and/or government-wide regulations.
- E. Absence Due to Emergency Situations: Excused absence during emergency situations does not generally apply to employees who provide critical services because of the need to assure continuity of essential patient care operations. However, in extreme situations, where certain employees who provide critical services make reasonable efforts to get to work and are unable to do so, excused absence may be appropriate.
- F. Whenever employees are unable to leave the facility at the end of their shifts due to inclement weather, or other emergency circumstances, the Department will review staffing needs to determine if any of these employees are required to perform duties during these emergency periods. If the employee is assigned work, the employee will be paid in accordance with established policy for the payment of premium rates.
- G. Employees who are unable to leave the facility at the end of their shifts due to inclement weather, or other emergency circumstances, and who remain at the facility shall be provided available shelter until such time as the emergency is over.
- H. The Department and the Local at each facility will jointly plan the procedures for hazardous weather/emergency conditions and will annually communicate these procedures to employees.
- I. When conditions are of such an extreme and unusual nature as to prevent employees from leaving an office, and the office must be staffed on a 24-hour basis during an emergency involving danger to human life and Federal property, VA may use funds to provide food to the affected employees.

## **Section 16 – Religious Compensatory Time for Title 5, Hybrid and Title 38 Employees**

- A. Pursuant to 5 CFR 550.1002, an employee whose personal religious beliefs require abstention from work during certain periods of time may elect to engage in overtime work to compensate for time lost when meeting those religious requirements.
- B. To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the Department's mission, the Department shall afford the employee the opportunity to work compensatory overtime and shall in each instance, grant compensatory time off to an employee requesting such time off for religious observances when the employee's personal religious beliefs require that the employee abstain from work during certain periods of the workday or workweek.
- C. For the purpose stated in paragraph B of this section, the employee may work such compensatory overtime before or after the granting of compensatory time off. Advanced compensatory time off should be repaid with the appropriate amount of compensatory overtime work within a reasonable amount of time. Compensatory overtime for hourly employees shall be credited on an hour-for-hour basis or authorized fractions thereof. Appropriate records will be kept of compensatory overtime earned and used.
- D. When an employee elects to perform overtime work to compensate for time lost meeting religious requirements, the employee will not be entitled to overtime pay under 5 CFR Part 550 and the Fair Labor Standards Act Section 7 for those time periods.

## **Section 17 – Military Leave for Title 5, Hybrid and Title 38 Employees**

- A. Military leave will be administered in accordance with law and regulations. The Department shall not deny an employee any benefit of employment on the basis of his or her membership in the National Guard or the Armed Forces Reserves.
- B. Employees whose appointments are not limited to one year or less, and who are members of the National Guard or the Armed Forces Reserves, are entitled to military leave for active duty, or active duty for training, in the following amounts:
  - 1. Full-time Title 5 and full-time Title 38 employees are entitled to 15 calendar days of regular military leave in a fiscal year.
  - 2. Part-time Title 38 employees are entitled to 15 calendar days of regular military leave in a fiscal year.
  - 3. Part-time Title 5 employees are entitled to no more than fifteen (15) calendar days of regular military leave in a fiscal year, prorated based on the number of hours in the employee's workweek.
- C. Any employee who does not use his or her entire entitlement of military leave can carry over any unused military leave (not to exceed 15 days) to the next fiscal year. Military leave may never exceed 30 days in a fiscal year, except when the employee is entitled to additional military leave under 5 USC 6323(b), (c), or (d).

- D. 5 USC 6323(b) provides 22 workdays per calendar year for emergency duty as ordered by the President, the Secretary of Defense, or a State Governor.
- E. 5 USC 6323(c) provides unlimited military leave to members of the National Guard of the District of Columbia for certain types of duty ordered or authorized under Title 39 of the District of Columbia Code.
- F. For employees who are charged leave in one-day increments, the minimum charge to military leave is one day. For all other employees, the minimum charge to leave is one hour. Military leave should be credited to a full-time employee on the basis of an eight-hour workday.
- G. An employee may be charged military leave only for hours that the employee would otherwise have worked and received pay. For example, if an employee works for the Department on a Monday-Friday schedule with weekends off, and the employee is scheduled for military duty Friday through Monday, the employee is charged military leave only for Friday and Monday, not for the weekend days.
- H. The Department will take into consideration the schedules of employees who work off-tours and will, when possible, arrange schedules to allow such employees to have scheduled days off immediately preceding and following the required military leave.
- I. A Title 5 employee's pay remains the same for periods of military leave under 5 USC 6323(a) and (c), including any premium pay the employee would have received if not on military leave. For military leave under 5 USC 6323(b), the employee's civilian pay is reduced by the amount of military pay for the day of military leave. However, employees may choose not to take the military leave and instead take annual leave and keep both the military and civilian pay.
- J. Military leave for Title 38 employees is subject to VA Handbook 5011, Part III, Chapter 3, paragraph 7 which is not part of this negotiated agreement and provided for informational purposes only.
- K. When the Department is given at least two weeks advance notice, and when there are qualified employees available to perform the necessary work, the Department will make every effort to provide, through advance scheduling, days off for employees in the bargaining unit to attend weekend training drills. If, because of an operational need, the Department is unable to schedule time for the employee to attend weekend training drills, the Department will make every effort to afford the employee an alternative work schedule within the administrative workweek to prevent loss of pay or other benefits.
- L. The Uniformed Services Employment and Reemployment Rights Act of 1994 generally requires the Department to place an employee entering the military on LWOP unless the employee chooses to be placed on military leave or annual leave, or the employee requests to be separated. Additionally, the Department will comply with all USERRA requirements upon an employee's return from mobilization.
- M. The Department will not arbitrarily deny an employee's request for military leave.
- N. Employees Returning From Active Duty. In accordance with the Presidential Memorandum dated November 14, 2003, as a welcome home, returning Federal Civil

servants who were called to active duty in the Global War on Terrorism will be granted 5 days of excused absence for every deployment.

### **Section 18 – Advanced Sick Leave for Title 5 Employees**

- A. Advanced sick leave will be administered consistent with 5 CFR 630.402 and VA Handbook 5011. Advanced sick leave may be combined with approved annual leave or LWOP when necessary to cover one continuous period of absence.
- B. Denials of requests for advanced leave must be conveyed to the employee promptly and must contain a specific written explanation of the reasons for the denial.
- C. Full-time Title 5 employees, in accordance with 5 CFR 630.402, may be advanced up to a maximum of 240 hours of sick leave at any time. Employees will not be required to exhaust their annual leave balances to apply for advanced sick leave.
- D. Part-time Title 5 employees may be advanced an amount of sick leave prorated according to the number of hours in the employee's regularly scheduled administrative workweek.
- E. Sick leave shall not be advanced to Title 5 employees on time-limited appointments in an amount in excess of that amount which could accrue during the remainder of the current appointment.
- F. 240 hours is the maximum amount of advanced sick leave a Title 5 employee may have to his or her credit at any one time.
- G. A Title 5 employee may be advanced sick leave for the following reasons:
  - 1. When the employee is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;
  - 2. For a serious health condition of the employee or a family member;
  - 3. When the employee would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease;
  - 4. For purposes relating to the adoption of a child; or,
  - 5. For the care of a covered service member with a serious injury or illness, provided the employee is exercising his or her entitlement under 5 USC 6382(a)(3).
- H. Up to 104 hours of a full-time Title 5 employee's advanced sick leave may be used:
  - 1. When he or she receives medical, dental or optical examination or treatment;
  - 2. To provide care for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental, or optical examination or treatment;

3. To provide care for a family member who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease; or,
  4. To make arrangements necessitated by the death of a family member or to attend the funeral of a family member.
- I. An employee requesting advanced sick leave will be required to provide medical documentation that is administratively acceptable to the Department.
  - J. An employee may not receive advanced sick leave when the employee is pending a decision by the OPM on a claim for disability retirement. (5 CFR 630.402 VA Handbook 5011, Part 3, Chapter 2 for Title 5 employees and Chapter 3 for Title 38 employees).
  - K. Upon separation the liquidation of advance sick leave procedures will be in accordance with 5 CFR 630.209.

### **Section 19 – Advanced Annual Leave for Title 5 Employees**

- A. An employee may be advanced all annual leave that will accrue up to the end of the leave year.
- B. Advanced annual leave may not be granted to an employee beyond the date set for the expiration of the employee's time-limited appointment or to any employee if there is a likelihood that the employee will retire, be separated, or resign from the Department before the date the employee will have earned the leave.
- C. Upon separation, employees must repay the balance of any remaining advanced annual leave.
- D. Advanced annual leave will be requested and authorized consistent with Section 2 above.

### **Section 20 – Advanced Sick Leave for Title 38 Employees**

- A. Full-time Physicians, Dentists, Podiatrists, and Optometrists may be advanced up to 45 days of sick leave at any time.
- B. Full-time Title 38 Nurses, Nurse Anesthetists, Physician Assistants, and Expanded-Function Dental Auxiliaries may be advanced up to 360 hours of sick leave at any time.
- C. Part-time Physicians, Dentists, Podiatrists, Chiropractors, Optometrists, Nurses, Nurse Anesthetists, PAs and EFDAs may be advanced sick leave based on the ratio which their employment bears to full-time employment and the amount of sick leave that may be advanced to a corresponding full-time employee. For example, a half-time employee who is not on a time limited appointment may be advanced up to 180 hours of sick leave at any time during the leave year.
- D. Sick leave shall not be advanced to Title 38 employees on time-limited appointments in an amount in excess of that amount which could accrue during the remainder of the current

appointment. Employees will not be required to exhaust their annual leave balances to apply for advanced sick leave.

- E. Title 38 employees are eligible to receive advanced sick if they meet the criteria to use earned sick leave as set forth in the Section above titled Sick Leave for Title 5, Hybrid and Title 38 Employees.
- F. Advanced sick leave may not be granted to an employee if there is a likelihood that the employee will retire, be separated, or resign from the Department before the date the employee will have earned the leave. Upon separation, employees must repay the balance of any remaining advanced sick leave.
- G. An employee requesting advanced sick leave will be required to provide medical documentation that is administratively acceptable to the Department.

### **Section 21 – Advanced Annual Leave for Title 38 Employees**

- A. Full-time Physicians, Dentists, Podiatrists, Chiropractors, and Optometrists appointed under authority of 38 U.S.C. 7401(1), 7405(a)(1)(A) or 7306 may be advanced annual leave not to exceed 26 days at any time.
- B. Full-Time Nurses, Nurse Anesthetists, PAs, EFDAs and 7306 Appointees in Title 5 and Hybrid Title 38 Occupations may be advanced annual leave, not to exceed 208 hours.
- C. Part-Time Physicians, Dentists, Podiatrists, Chiropractors, Optometrists, Nurses, Nurse Anesthetists, PAs, EFDAs and 7306 Appointees in Title 5 or Hybrid Title 38 Occupations may be advanced annual leave based on the ratio which their employment bears to full-time employment and the amount of annual leave that may be advanced to a full-time employee covered by subparagraph (3)(a) and (b). For example, a half-time employee who is not on a time limited appointment may be advanced up to 104 hours of annual leave at any time during the leave year.
- D. Employees on time-limited appointments may not be advanced annual leave in an amount that would exceed the amount the employee can accrue during the remainder of the appointment.
- E. Advanced annual leave will be requested and authorized consistent with Section 3 above.
- F. Upon separation, employees must repay the balance of any remaining advanced annual leave.

### **Section 22 – Voluntary Leave Transfer Program**

- A. As authorized by 5 CFR 630, Subpart I and J, as applied to Title 5 and Title 38 employees and consistent with this Agreement, employees are entitled to donate and receive leave for medical emergencies.
- B. The Leave Transfer Program allows an employee to transfer annual leave to an approved leave recipient (excluding the employee's supervisor) up to one-half of the amount of annual leave the employee will accrue during the leave year.

- C. The minimum amount of annual leave that may be transferred to and from a Title 5 employee, or Title 38 employee who is charged leave in hours, is four hours.
- D. Title 5 employees may transfer to Title 38 employees and Title 38 employees may transfer to Title 5 employees.
- E. The minimum amount of annual leave that may be transferred from a Title 38 employee who is charged leave in whole day increments is one day. For a leave transfer between an employee who is charged leave in hours and an employee who is charged leave in whole days, the number of hours transferred for each whole day is eight hours. For a leave transfer between employees who are each charged leave in whole day increments, the recipient will be credited with one whole day for each whole day donated.
- F. Annual leave may not be transferred to an employee's immediate supervisor.
- G. The Department will assist employees in preparing or will prepare the employee's solicitation memorandum which is directed to employees whom the employee designates. The Department will advise employees of how and where to receive such assistance.
- H. When an employee receives donated leave, it may be used only for the medical emergency for which it was donated.
- I. If an employee has use or lose annual leave at the end of the leave year and would like to donate it, the employee should contact an appropriate official.
- J. When an employee donates leave to a party in another federal agency, the donating and receiving agencies are in the best position to determine whether donated annual leave is needed by its employees in disaster situations and can quickly facilitate the transfer of donated annual leave among administrations. They are responsible for:
  1. Determining whether, and how much, donated annual leave is needed by affected employees;
  2. Approving leave donors and/or leave recipients within the Department; and,
  3. Facilitating the distribution of donated annual leave.
- K. Forms for donating and receiving annual leave under the inter-agency Emergency Leave Transfer Program can be accessed on OPM's web site.

**Section 23 – Family and Medical Leave Act (FMLA)**

- A. FMLA pursuant to 5 USC 6381 *et seq.*:
  1. Under the FMLA permanent bargaining unit employees who have completed at least 12 months of service are entitled to up to 480 hours of LWOP during any twelve month period for one or more of the following reasons:
    - a. The care of a spouse, son, daughter or parent with a serious health condition;

- b. A serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of his or her assigned position;
  - c. Birth of a son or daughter and the care of such son or daughter; or,
  - d. Placement of a son or daughter with the employee for adoption or foster care;
  - e. Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" or,
  - f. 26 workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).
- 2. Son or daughter means person who is under 18 years of age and is a biological, adopted, or foster child, a step child, a legal ward, or a child of a person standing *in loco parentis*.
  - 3. Parent means biological parent or individual who stands or stood *in loco parentis* to an employee.

B. Maternity and Paternity

- 1. Once an employee's entitlement under Section A above has been exhausted, permanent bargaining unit employees who have completed at least 12 months of service are entitled to an additional four weeks of leave without pay during any twelve-month period for the following reasons:
  - a. Birth of a son or daughter and the care of such son or daughter (provided such son or daughter is under 18 years of age or incapable of self-care because of a medical or physical disability); or,
  - b. Placement of a son or daughter with the employee for adoption or foster care.
- 2. Son or daughter means a biological, adopted, or foster child; a step child; a legal ward; or a child of a person standing *in loco parentis*.

C. Part time employees with appointments that are not limited to one year or less to a pro-rated are entitled to unpaid leave in amount based on their average weekly hours for the purposes in Paragraph 1.

D. Pursuant to the President's June 17, 2009 Memorandum on Federal Benefits and Non-Discrimination, the OPM expanded employee eligibility to use sick leave. In the spirit of this change, the employer will grant up to 480 hours of LWOP during any twelve month period to permanent bargaining unit employees who have completed at least 12 months of service to care for "[a]ny individual related by blood or affinity" whose close association with the employee is the equivalent of a family relationship, if the employee is ineligible for FMLA pursuant to A above solely upon the basis that the family member requiring the care does not meet the definition of family member in 5 USC 6381. If an employee has

used any portion of LWOP pursuant to paragraph A above, the employee's eligibility for leave under this paragraph will be reduced.

- E. An employee may not retroactively invoke his or her entitlement to family and medical leave. However, if an employee was physically or mentally incapable of invoking the entitlement during the entire period he or she was absent for work for a qualifying reason, the employee may invoke the entitlement within two workdays after returning to work. Such incapacity must be documented by a written medical certification from a health care provider.
- F. Employees may only take the amount of family and medical leave necessary to manage the circumstances that prompted the need for the leave.
- G. Holidays do not count against the maximum entitlement to family and medical leave.
- H. Substitution of Paid Leave – Employees may substitute annual leave, compensatory time off, or credit hours for unpaid family or medical leave for any part of the applicable period. Additionally, sick leave may be used but only to the extent allowed by law and government-wide regulations. However, once the leave commences, employees may not retroactively substitute paid time off for unpaid family and medical leave.
- I. Notice of Leave
  1. When the need for unpaid family and medical leave is foreseeable and the employee fails to give 30 calendar days notice, the Department may require the employee to delay taking family and medical unpaid leave until at least 30 calendar days after the employee's request has been received. Examples include family and medical leave for an expected birth of a child, expected placement for adoption or foster care, or planned medical treatment. If the birth or placement or planned medical treatment requires leave to begin within 30 days, the employee must provide as much notice as is practicable.
  2. If leave taken under Paragraph A above is foreseeable, the employee shall consult with the Department and make a reasonable effort to schedule medical treatment so as to not disrupt the Department's operations, subject to the approval of the authorized health care provider.
  3. If the leave is not foreseeable, the employee or his or her personal representative (e.g., family member or other responsible party) shall provide notice within a reasonable period of time appropriate to the circumstances involved.
  4. The Department may require that a request for leave under this section be supported by evidence that is administratively acceptable.
- J. Medical Certification (when requesting leave for serious health conditions):
  1. An employee shall provide written medical certification, signed by the health care provider, no later than 15 calendar days after the Department has requested such certification. If it is not practicable under the circumstances to provide the certification despite the employee's diligent good faith efforts, the employee must provide the

certification within a reasonable period of time, but no later than 30 calendar days after the Department has requested the certification.

2. The written medical certification shall include:
  - a. The date the serious health condition commenced;
  - b. The probable duration of the serious health condition or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity;
  - c. The appropriate medical facts, within the knowledge of the health care provider, regarding the serious health condition, including a statement as to the incapacitation, examination, or treatment that may be required by an authorized health care provider;
  - d. For the purposes of leave taken to care for a family member, a statement from the authorized health care provider that the relative by blood or affinity of the employee requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation or in making arrangements to meet such needs, and that the family member would benefit from the employee's care or presence. The employee will also provide a statement of the care he or she will provide and an estimate of the amount of time needed to care for his or her relative by blood or affinity;
  - e. A statement that the employee is unable to perform the functions of his/her position; and
  - f. In the case of intermittent leave or leave on a reduced schedule, for planned medical treatment, the dates (actual or estimates) on which the treatment is expected to be given, the duration of such treatments, and the period of recovery, if any, or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.
    - i. At its own expense, the Department may require subsequent medical recertification on a periodic basis, but not more than once every 30 calendar days, for leave taken for purposes related to pregnancy, chronic conditions, or long-term conditions meeting the definition of serious health care condition in 5 CFR 630.1202.
    - ii. The Department will not require any personal or confidential information in the written medical certification other than that required by this Section and the law.
    - iii. To remain entitled to leave under the Family and Medical Leave Act, an employee or family member must comply with any the Department requirement that they submit to examination (not treatment) to obtain a second or third medical certification from a health care provider other than the individual's health care provider.

- iv. If the employee is unable to provide the requested medical certification before leave begins or the Department questions the validity of the original certification provided by the employee, and the medical treatment requires the leave to begin, the Department shall grant provisional leave pending final written medical certification.
- v. If the employee does not provide the required certification, such leave may not be taken under the Family and Medical Leave Act. The Department may charge the employee absence without leave or allow the employee to take annual leave, sick leave, or leave without pay, as appropriate.

**K. Intermittent Leave or Reduced Leave Schedule**

- 1. Leave taken for maternity or paternity of this section may not be taken intermittently or on a reduced leave schedule unless the employee and the Department agree to do so.
  - 2. Leave taken for a serious health condition of this section may be taken intermittently or on a reduced leave schedule subject to the notice and certification requirements in paragraphs H and I, respectively.
  - 3. If an employee takes leave intermittently or on a reduced schedule, which is foreseeable based on planned medical treatment or recovery from a serious health condition, the Department may place the employee temporarily in an available alternative position for which the employee is qualified and that can better accommodate recurring periods of leave.
- J. An employee eligible for FMLA may request to participate in the Telework Program consistent with this Agreement. Telework may not be used to provide care for a family member during scheduled work hours.
- K. Upon return from statutory FMLA, the employee will be restored to the same position as occupied before the leave or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.
- L. An employee who meets the criteria for FMLA and has complied with the requirements under this section may not be denied Family and Medical leave, consistent with all applicable rules governing annual or sick leave.

**Section 24 – Disabled Veterans**

When a disabled veteran employee presents a statement from a medical authority that treatment for a service-connected disability is required, annual leave or sick leave will be granted, if available; otherwise, LWOP will be granted. The granting of such leave is mandatory provided that the veteran gives prior notice of definite days and hours of absence for medical treatment.

**Section 25 – Blood, Bone Marrow and Organ Donor Leave**

- A. Donor leave will be granted consistent with government-wide rules and regulations.

- B. Employees will be granted up to four hours of excused absence to donate blood and rest/recovery, to a Department sponsored or endorsed blood program. Additional excused absence will be granted to employees who donate blood platelets through Department endorsed Hemophoresis Programs. Time spent in necessary travel for such purposes shall also be administrative leave. The Department may require available documentation of blood donation when there is a basis to verify the donation.
- C. Upon request, subject to certification by a health care provider, leave-approving officials shall approve excused absence for employees who serve as living donors for bone marrow, organ, and tissue donation and transplantation. The use of excused absence can cover time off for activities such as donor screening, the actual medical procedure, and recovery time. Leave-approving officials shall approve:
  - 1. Up to seven workdays of absence without charge to leave or loss of pay for each donation by employees participating as living bone marrow donors; or,
  - 2. Up to 30 workdays of absence without charge to leave or loss of pay for employees participating as living organ and tissue donors.
  - 3. The length of absence from work can vary depending on the medical procedure involved in the donation. Therefore, for longer periods of incapacitation, leave-approving officials shall approve annual and/or sick leave or LWOP in combination with the maximum amounts of excused absence specified as above in this section.

**Section 26 – Funeral Leave**

- A. The Department shall grant employees funeral leave in an amount not to exceed three days to allow an employee to make arrangements for, or to attend, the funeral or memorial service for an immediate relative who died as the result of a wound, disease, or injury incurred while serving as a member of the armed forces in a combat zone. The three days need not be consecutive but if not, the employee shall furnish the approving authority satisfactory reasons justifying a grant of funeral leave for non-consecutive days.
- B. The Department shall grant employees funeral leave in an amount not to exceed one day to allow an employee to make arrangements for, or to attend, the funeral or memorial service for an immediate relative who died as the result of a wound, disease, or injury incurred while serving as a member of the armed forces not in a combat zone.
- C. The Department may grant funeral leave only from a prescribed tour of duty, including regularly scheduled overtime, from a period during which, except for absence on funeral leave, the employee would have worked.

**Section 27 – Rest and Relaxation Title 38 Physicians, Dentists, Podiatrists, and Optometrists**

The Department may approve absence for a period not to exceed 24 consecutive hours for rest and relaxation for full-time physicians, dentists, podiatrists, and optometrists who have been required to serve long hours in the care and treatment of patients.

**Section 28 – Excused Absence (Administrative Leave)**

Excused absence (sometimes referred to as administrative leave) is absence from assigned duties without charge to leave or loss of pay. Excused absence may be granted for activities which are in the government's interest.

## **ARTICLE 18 – TELEWORK**

### **Section 1 – General**

- A. The Department telework program will be governed by applicable law, government-wide rules and regulations, and VA policy. Any telework program established under this Article will be a voluntary program which permits employees to work at home or at other approved sites away from the office for all or a part of the work week. Federal telework programs are established primarily to meet the Department's mission and operational requirements.
- B. While telework is not an entitlement, the Department will consider an employee's request to participate in the Department's telework program consistent with law, government-wide regulations and VA policy. Telework is an arrangement established first and foremost to facilitate the accomplishment of work.
- C. Moreover, while telework should provide greater options to employees seeking to balance their work and family demands, telework may not be used for dependent or family care, nor may it be used to conduct other personal business while the employee is in an official duty status at an approved alternative duty station.
- D. If a duty to bargain is triggered under the Statute regarding the VA's telework program, the Department will provide notice and bargain as appropriate.

### **Section 2 – Definitions**

- A. Telework – consistent with 5 USC 6501, the term telework or teleworking refers to a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee's position, and other authorized activities, from an approved work site other than the location from which the employee would otherwise work.
- B. Telework arrangement for an employee will be documented on VA Form 0740, including but not limited to, the type of arrangement such as regular and recurring, ad hoc, and partial days, as well as the length of the agreement.

### **Section 3 – Request to Telework**

- A. Bargaining unit employees shall receive a written decision concerning their telework request normally within 10 business days but no later than 20 business days after the Department receives a completed telework request / agreement (VA Form 0740) located in Appendix C of VA Handbook 5011, Part II, Chapter.
- B. In accordance with this Agreement, Locals will be notified in writing when employees enter into telework agreements and when such agreements are terminated, normally within 10 business days.

- C. All requests for telework will be submitted in writing using VA Form 0740. If after review, the request is denied, an explanation will be provided in writing to the employee in accordance with Section 3A above.
- D. If an employee's position is otherwise suitable for telework and an employee is a qualified individual with a disability or an employee has an approved claim from the Department of Labor Office of Workers Compensation for a work related injury, the employee may request to telework consistent with this Article. Nothing in this Article shall preclude the Department from offering telework in these situations. If a telework arrangement is approved due to a disability or medical condition it will be documented on VA Form 0740.

#### **Sections 4 – Criteria**

Employees who meet the criteria below may be eligible to participate in the program if the Department determines that the employee's position and particular work assignment(s) are appropriate for telework:

- A. The employee volunteered (or concurred with the supervisor's recommendation) to telework;
- B. The employee must occupy a suitable position;
- C. Department officials are responsible for determining which positions are appropriate for telework arrangements consistent with labor relations obligations;
- D. The employee must have a history of being reliable, responsible and being able to work independently;
- E. The employee is not a trainee or intern;
- F. The employee is not in the first 90 days of any probationary period;
- G. Sufficient work activities must be portable and be performed effectively outside of the traditional office;
- H. Job tasks must be quantifiable or primarily project oriented;
- I. Contact with other employees, the supervisor or manager and services clientele is predictable and normally scheduled;
- J. The technology needed to perform the work off-site is available;
- K. The work does not require taking classified documents out of the traditional office;
- L. The employee agrees to protect government records from unauthorized disclosure or damage and comply with the Privacy Act of 1974;
- M. The employee has successfully completed the mandatory Telework Training Course including the Information Security Awareness Training and VHA Privacy Policy Training;
- N. The employee has not breached information security protocol;

- O. Telework arrangements do not have any negative impact on the work of other members of the employee's workgroup;
- P. The employee has a fully successful or better official rating of record for the most recent rating period;
- Q. The employee has workspace and utilities at home suitable for performing work;
- R. The employee is willing to sign and abide by the Telework Program Agreement concerning participation in the Telework Program;
- S. The employee is willing to sign and abide by the Self-Certification Safety Checklist;
- T. An employee who has been disciplined for being absent without leave for more than five days in any calendar year is not eligible for telework;
- U. An employee who has been disciplined for reviewing, downloading or exchanging pornography on a federal government computer or while performing official federal government duties is not eligible for telework;
- V. The assignment will meet the operational needs of the organization;
- W. Employees participating in the Telework Program will be provided equipment necessary to perform their duties, consistent with VA Form 0740; and,
- X. If the Department is unable to provide a laptop or the employee requests and is subsequently approved to use a personal computer, the Department will provide and maintain all software necessary for performing his or her duties, consistent with applicable VA regulations.

### **Section 5 – Telework Program Agreement**

- A. Prior to participating in the Telework Program, employees will be required to complete VA Form 0740. A new Telework Program Agreement must be completed if significant changes occur (e.g., change in telework site address/location, change in supervisor, and/or change in official duty station). Continued participation in telework shall be subject to periodic review by the supervisor for compliance with the requirements of this Article.
- B. Employees are responsible for maintaining productivity and for fulfilling their obligation to account for a full day's work.
- C. Teleworkers must complete and sign the Telework Self-Certification Safety Checklist (VA Form - 0740) certifying that the telework site is safe and that all requirements to do official work at home are met. The employee agrees to permit inspections by representatives of the Department, as required, during normal working hours to insure proper maintenance of any government-owned property and conformance with safety standards. The employee will be provided advance notice of any inspection. The Local has the right to be present at the inspection. The date of the safety inspection will be coordinated between the safety inspector and the employee within five days of the day that the inspection has been determined to be needed. The date of this inspection will be provided to the Local.

### **Section 6 – Situational Telework Assignment Request**

Situational telework is approved on a case-by-case basis, where the hours worked are not part of a previously approved, ongoing and regular telework schedule. The Department may require employees to submit a separate request for each specific assignment to be performed at the telework site. The request will describe the nature of the duties to be performed and the specific days involved. The request will be submitted to the supervisor for approval. The supervisor will document approval or denial of the request as soon as possible. Employees must make the request to work at the telework site at least one workday in advance; however, this time frame may be waived at the discretion of the supervisor. If the assignment is initiated by the supervisor and the employee concurs, the employee is still responsible for submitting and completing VA Form 0740.

## **Section 7 – Removal From Program**

- A. Telework is not an employee entitlement. The Department may terminate a telework arrangement if it is not compatible with or does not contribute to the organization's mission. Telework termination letters will be provided in writing and include the business-based rationale for the decision.
- B. When a decision is made to remove an employee from the telework program, the employee must be given at least a two week advance written notice indicating the reason(s) for removal. Immediate removal may be made in cases of emergencies, breach of information security protocol or the employee works overtime without prior advanced approval.
- C. An employee who is otherwise eligible may reapply for telework program participation 30 calendar days after removal from the program. The Department will determine if the employee is capable of meeting the telework program agreement and if his or her performance is at least fully successful/satisfactory.
- D. Normally, supervisors will counsel employees about known performance issues before terminating a telework arrangement, unless it involves one of the three exceptions in Section 7B. It is a mutual responsibility to discuss any concerns regarding the effectiveness of a telework arrangement.
- E. The Department may suspend or terminate an employee's telework arrangement if the Department finds that:
  - 1. The employee's continued participation in the telework arrangement is inconsistent with the criteria section above;
  - 2. The employee's performance has declined (for example, where the employee fails to meet established performance criteria or fails to progress satisfactorily on assignments);
  - 3. The employee fails to adhere to the provisions of his or her Telework Program Agreement or otherwise fails to meet his or her obligations under the program;
  - 4. Organizational and budgetary situations that dictate removal from telework assignments; or,
  - 5. The employee fails to truthfully report time worked.

- F. The Department will not act in an arbitrary fashion. Before removing an employee from the program the Department will speak with the employee and determine it is acting on reliable information.
- G. Except for instances involving organizational or budgetary reasons, when an employee's telework arrangements is suspended or terminated an employee may file a grievance consistent with Article 40 - Grievance Procedure. Additionally, consistent with EO 13522, the Department will pre-decisionally discuss organizational and budgetary concerns regarding telework to the greatest extent practicable.

### **Section 8 – Problems Affecting Work Performance**

It is the responsibility of employees to inform supervisors as soon as practicable whenever any problems arise which adversely affect their ability to perform work at the telework site. Examples include situations such as equipment failure, power outages or telecommunications difficulties.

### **Section 9 – Hours of Work and Leave**

- A. Employees performing work at a telework site will follow established procedures for requesting and obtaining approval of leave, consistent with Article 17 - Time and Leave.
- B. Employees performing work at the telework site are subject to the same maximum workday limits as they would be if they were performing work at the Official Duty Station (ODS), consistent with Article 15 - Hours of Work.
- C. Employees are only authorized to work overtime or compensatory time when the Department approves the overtime or compensatory time in advance in accordance with Article 16 - Overtime.
- D. Employees are only authorized to work credit hours while on telework when the Department approves the credit hours in advance and consistent with Article 15 - Hours of Work.
- E. Unauthorized overtime, credit hours and compensatory time will not be credited. Telework agreements may be terminated for employees who work unauthorized overtime, credit hours or compensatory time. The decision to terminate the agreement should be made on a case-by-case basis based upon the circumstances after discussion with the employee.
- F. An employee on an approved telework arrangement will be able to participate in regular staff meetings and other events that involve his or her work unit to the greatest extent practicable. This may involve participation electronically, telephonically or require the employee to travel to the duty station.
- G. Consistent with Article 15 - Hours of Work, an employee may request to work an alternative work schedule while teleworking or to request a change to an existing, approved alternative work schedule while teleworking. Supervisory approval will be done consistent with this Article, as well as Article 15 - Hours of Work and Article 16 - Overtime.

### **Section 10 – Program Requirements**

- A. The employee will be available to supervisors, coworkers, and the public, as applicable, by telephone, voicemail, email, or other communications media during the scheduled daily tour of duty.
- B. The employee must provide his or her supervisor with a telephone number where he or she can be reached at all times while on duty.
- C. The employee must check his or her voicemail frequently, both at the telework site and the ODS if there is a separate voicemail at the ODS.
- D. Where available, the employee is expected to forward his or her office telephone to the telework site. When work calls have been forwarded, the employee will answer the telephone at his or her telework site in the same professional manner as he or she would at the ODS.

### **Section 11 – Emergency Closing/Late Openings/Early Dismissals**

- A. On a day when an employee is scheduled to work at the telework site and their official duty station facility is closed for all or part of a day, the following rules apply:
  - 1. Full Day Closing - A telecommuting employee will sometimes, but not always, be affected by an emergency requiring his or her official duty station to close. When both the official duty station and the telework site are affected by a widespread emergency, the Department should grant the telecommuting employee excused absence as appropriate.
  - 2. Late Openings - When an emergency affects only the telework site, the Department can require the telecommuting employee to report to his or her official duty station, approve annual leave or leave without pay, or authorize an excused absence.
  - 3. Late Arrivals and Early Dismissals - On days when a late arrival or early dismissal occurs, the employee is required to perform his or her full telework site schedule, if located at telework site.
- B. In the event of a local emergency situation such as a transit strike or a natural disaster which adversely affects an employee's ability to commute to the workplace, the Department and the Local agree to meet as soon as practicable to discuss possible temporary telework arrangements for affected employee(s).

### **Section 12 – Telecommunication Centers**

The Department and the Local agree to continue to discuss the feasibility of telecommuting centers.

### **Section 13 – Evaluation of Program**

The Department, at the appropriate level(s), will periodically evaluate its telework program to determine impact on work operations, to evaluate the effectiveness of the program, and to present any relevant concerns to employees working under the telework program. Information gathered in accordance with 5 USC 6506(b) will be shared with the Union upon request.

## **Section 14 – Priority**

- A. When there are limitations on selections for requests to approve telework arrangements to fewer than the number of employees requesting telework, selections will be made by seniority, consistent with Article 60 - Seniority.
- B. The Parties agree that employees official tour of duties will be decided (specific days, hours and locations) consistent with VA Form 0740.

## **Section 15 – Grandfather Clause**

On the effective date of this Agreement, employees currently working on a telework agreement are not required to reapply for telework and are bound by the terms of this Article.

# **ARTICLE 19 – OFFICIAL TRAVEL**

## **Section 1 - Compensation and Travel**

- A. To the maximum extent practical, the Department shall schedule time spent in a travel status away from the employee's official duty station (ODS) within the normal working hours. Where it is necessary that travel be performed during non-duty hours, the employee will be paid overtime or may opt for compensatory time when such travel constitutes hours of work under Title 5 of the U.S. Code or the Fair Labor Standards Act, if applicable. If the travel does not constitute hours of work under 5 USC or the Fair Labor Standards Act, the employee may be eligible for compensatory time for travel. It is the employee's responsibility to request and obtain travel authority in advance of travel.
- B. Official travel away from an employee's ODS is considered hours of work if the travel is:
  - 1. Within the days and hours of the employee's regularly scheduled administrative workweek, including regularly scheduled overtime hours; or,
  - 2. Outside the hours of the employee's regularly scheduled administrative workweek, is ordered or approved, and meets one of the following four conditions:
    - a. Involves the performance of work while travelling (such as driving a loaded truck);
    - b. Is incident to travel that involves the performance of work while traveling (such as driving an empty truck back to the point of origin);
    - c. Is carried out under arduous and unusual conditions that the travel is inseparable from work (e.g., travel on rough terrain or under extremely severe weather conditions); or,
    - d. Results from an event that could not be scheduled or controlled administratively by any individual or agency in the executive branch of government (such as training scheduled solely by a private firm or a job-related court appearance required by a court subpoena).

- C. Consistent with 5 CFR 550.1403, to be creditable as hours of work, travel must be officially authorized travel for work purposes. In other words, travel must be for work purposes and must be approved by an authorized agency official or otherwise authorized under established agency policies. An employee is entitled to compensatory time off for travel when the employee is required to travel away from his or her ODS and the travel time is not otherwise compensable hours of work under any other legal authority. Employees requesting compensatory time off for travel will submit a written request on VA Form 0861 or successor document.
- D. Employees are entitled to compensatory time off for travel consistent with 5 CFR 550.1404. For the purpose of compensatory time off for travel, time in a travel status may include:
1. Time spent traveling between the ODS and a temporary duty station;
  2. Time spent traveling between two temporary duty stations; and,
  3. The usual waiting time preceding or interrupting such travel (e.g., waiting at an airport or train station prior to departure).
  4. Compensatory time off for travel shall be administered consistent with law, government-wide regulation and VA Handbook 5007, Part VIII, Chapter 15. Determinations regarding what is creditable as "usual waiting time" are within the sole and exclusive discretion of the employing agency. Employees may request credit of excess waiting time by providing a written explanation in the remarks section of VA Form 0861. The explanation must include the amount of excess waiting time requested, the reason for the excess waiting time, an explanation why the employee was unable to use the time for personal use and any additional information or documents that supports the request. Extended periods of waiting time when the employee is free to rest, sleep, or otherwise use the time for his or her own purposes, are not creditable as time in a travel status.
- E. Compensatory time off for travel may only be earned for time in a travel status when such time is not otherwise compensable. Compensable refers to periods of time creditable as hours of work for the purpose of determining a specific pay entitlement. For example, certain travel time may be creditable as hours of work under the overtime pay provisions.
- F. Compensatory time off for travel is forfeited:
1. If not used by the end of the 26th pay period after the pay period during which it was earned;
  2. Upon voluntary transfer to another agency;
  3. Upon separation from the Federal Government.

G. An employee may not receive payment for unused compensatory time off for travel.

## **Section 2 – Change from Per Diem Allowance to Actual and Necessary Subsistence Expenses**

- A. Advance Authorization - An employee scheduled to travel in an area for which a per diem allowance is prescribed may request advance authorization for travel on the basis of

actual and necessary subsistence expenses. Any such request will normally be approved when the supporting justification showing that the unusual and exceptional circumstances for the request meets Department-wide guidelines.

- B. Post Approval - The Department will normally authorize, on a post-approval basis, reimbursement for actual and necessary subsistence expenses allowable under law, rules or regulations, if the employee can justify that prudent expenses required by the ordered travel exceeded the prescribed per diem rate. This provision applies only to travel involving assignments of 30 calendar days or less.

### **Section 3 – Continuation of Approved Travel Expenses**

Employees who are unable to arrive at or return from their destination as scheduled will be reimbursed for authorized travel expenses in accordance with government-wide regulations.

### **Section 4 – Advancement of Expenses**

A government credit card for travel allows employees to utilize the card to receive an advancement of expenses consistent with the Federal Travel Regulations and the VA travel regulations. Employees who are not required to have a government credit card for travel shall have the option of requesting a travel advance. Such request shall be filed by the employee as soon as possible and processed by the Department as expeditiously as possible.

### **Section 5 – Transportation, Travel and Per Diem**

- A. A requirement to provide official time for representational duties does not automatically provide authorization for travel and per diem expenses. Unless otherwise covered in this Agreement, official travel relating to union representatives on official time will only take place when all alternative means of conducting the meeting have been considered and the Department determines that such alternatives are insufficient for achieving the stated purpose, goals and objectives of the meeting. In order for the Department to grant the Union's requested travel to a location outside the ODS, the Union must provide a detailed proposal for the travel, on applicable VA forms, in accordance with applicable Department's regulations on travel. When approved, the Department will authorize travel orders for Union representatives engaged in representational duties while on official time, subject to provisions of the Federal Travel Regulations. The Union will make such requests as far in advance as practicable and the Department will respond in a timely fashion and not unduly delay the response to the requests.
- B. The Department shall not require employees to use a government credit card unless the employee makes more than two authorized trips a year. However, the Department has the discretion to issue a travel charge card to any employee who requests it.
- C. An employee can request the use of a VA cellular device for use while on official travel. If the Department is unable to provide the use of a cellular device, the employee will be reimbursed for the use of personal cellular devices in accordance with law, regulations, and VA policy.
- D. Employees shall not be required to use privately owned vehicles (POVs) for Department business. Use of a POV for official travel is subject to the Federal Travel Regulations and applicable VA travel regulations.

- E. Mileage for such use shall be compensated at the prevailing rate, published in the Federal Register.

### **Section 6 – Document and Property Loss / Theft**

An employee is accountable for government documents or property in his or her possession or custody. Employees exercising reasonable care will not be held responsible for documents or property damaged, lost, or stolen from their possession or custody.

### **Section 7 – Protective Assistance**

When an employee is on official travel and reasonably believes that the travel presents a threat to his or her personal safety, the employee will make the Department aware of such concerns. Upon request, the Department will review and discuss with the Union applicable safety procedures as well as the concerns raised by the traveler.

### **Section 8 – Return to Duty Station**

An employee on a long-term assignment may be authorized occasional return trips to his or her permanent duty station at the Department's expense on non-workdays. Approval for such return trips are at the administrative discretion of the authorizing official and may be authorized in accordance with law, government-wide regulation and VA policy.

### **Section 9 – Travel Savings Award Program**

- A. It is the employee's option whether to participate in the Travel Savings Award Program. Each time the employee has saved the government two hundred dollars or more, the Department shall reimburse the employee half the savings, as expeditiously as possible after the employee properly documents the savings. The amount of creditable savings will be reduced by the amount of any additional reimbursable transportation expenses that are incurred, such as additional taxicab charges.
- B. If an employee on approved official government travel elects to use his or her own personal airline or hotel travel benefits, such as free airline vouchers or frequent traveler club benefits and similar items, and the use of the benefits results in a cost savings to the Department, the employee may request an award of up to half the savings consistent with the Travel Savings Award Program policy. Such funds shall be reimbursed to the employee as expeditiously as possible following the employee's submission of an approved request for reimbursement.
- C. If an employee on approved official government travel elects to utilize lodging that costs less than the maximum lodging per diem rate that was not prepaid or prearranged by the Department, or completely avoids lodging expense, the employee may request an award of up to half the savings consistent with the Department's Travel Savings Award Program policy. Such funds shall be reimbursed to the employee as expeditiously as possible following the employee's submission of an appropriate approved request for reimbursement. If the employee stays at a hotel, the hotel must be Federal Emergency Management Administration (FEMA) approved for fire/safety requirements. This can be verified at <http://apps.usfa.fema.gov/hotel/#searchlist> or its successor. Transportation and lodging are not the exclusive bases for realizing creditable travel savings under this program.

Employees may be eligible for reimbursement in other circumstances, consistent with the Travel Savings Award Program, where the employee demonstrates a cost savings to the Department.

### **Section 10 – Local Travel**

- A. When travel to another location is necessary for representational activities while on official time, consistent with the provisions of this Agreement, and when the Department provides transportation to the location for official business (for example shuttle service), the Union will be allowed access to the transportation on a space-available basis.
- B. If a space is not available on Department provided transportation, the representative should use other transportation such as public transportation or a station car.
- C. The Union will not be reimbursed for any local travel expenses if the preceding methods of transportation are available and the representative declines to use them.
- D. When travel is approved and the preceding methods of transportation are not available and a union representative has obtained advance approval uses a POV, travel reimbursement will be pursuant to applicable travel regulations.

### **Section 11 – Travel for Union Representational Duties**

Employees who travel in connection with union activities (e.g., in a representational capacity) are not entitled to earn compensatory time off for travel because they are traveling for the benefit of the union, and not for agency-related work purposes.

## **ARTICLE 20 – TITLE 5 CLASSIFICATION**

### **Section 1 – General**

- A. Each Title 5 position covered by this Agreement that is established or changed must be accurately described in writing and classified to the proper occupational title, series, code, and grade, in accordance with OPM regulations and guidelines.
- B. Title 5 position descriptions must clearly and concisely state the principal and grade controlling duties, responsibilities, and supervisory relationships of the position.
- C. In order to ensure accurate position descriptions the employee should discuss changes in duties that impact how the position is classified with the supervisor to determine whether the position description is accurate.
- D. Employees will be furnished a current, accurate copy of the description of the position to which assigned at the time of assignment, when changes are made, and upon request. Position descriptions will be kept current and accurate and will be classified properly. Employees shall be properly compensated for duties performed on a regular and recurring basis. Current position descriptions will be provided to the Union, upon request. The employee and Union will be provided the opportunity to review proposed changes in position descriptions.

- E. Employees dissatisfied with the classification of their positions/jobs are encouraged to first discuss the problem with their supervisors.
- F. If the employee is not satisfied with the supervisor's explanation of the classification, the employee is then encouraged to discuss the matter with the appropriate official in Human Resources who will explain the basis for the classification/job grading.
- G. An employee and the Local, upon request, will have access to the position description, evaluation report (when available), organizational and functional charts and other pertinent information directly related to the classification of the position.
- H. This informal classification review process should be normally completed in 30 calendar days from the date the employee provides all requested information.
- I. An employee or the Local may request a desk audit. The audit will ordinarily be completed within 90 days from the date the employee provides all requested information. This time frame may be extended by mutual consent. Desk audits will be performed at the employee's work station when appropriate. The employee and the Local will be notified when a desk audit is being conducted and will be notified of the results. If an employee disagrees with the findings of a desk audit, he or she has a right to respond and request that the audit be done at the employee's workstation. The Department will review the request, determine whether an onsite desk audit is appropriate and inform the employee.
- J. If a systematic position classification or special maintenance review is conducted, the Department will meet and confer with the Union on procedures.
- K. Vacant positions will not be posted until the Department assures that they are authorized, properly described, evaluated, and classified according to series, title and grade.
- L. No position(s) will be downgraded without a thorough review. For a downgraded position, the employee's pay and grade will be retained in accordance with law and regulations.
- M. Upon request, the Department will inform the Union of the delegations of authority for the classifications of positions.
- N. Position descriptions, which are identified in the Department's career ladder program will identify all duties and responsibilities to meet the target performance level in order to obtain the career ladder objectives.
- O. When a position is reclassified throughout the Department, employees whose positions are reclassified will be advised in writing of the basis for the decision to reclassify the position.

## **Section 2 – Classification Appeals**

- A. The Department will provide, upon request, copies of procedures for filing classification appeals through the Department or OPM channels to employees and Locals.
- B. Bargaining unit employees are encouraged to adhere to the following classification appeal process:

1. If an employee is not satisfied with the facility's response in Section 1 he or she may file an appeal, with the assistance of the facility Human Resources Office and the Local, to appropriate Veterans Administration Central Office (VACO) officials. The Human Resources office will forward the appeal to the Department no later than 15 days from receipt. Generally, this review will be completed within 60 days of the date of the employee filing the appeal. This does not preclude an employee from filing a classification/job grading appeal directly to VACO.
  2. If the employee is not satisfied with the VACO response he or she may seek a classification review from the Office Personnel Management (OPM).
- C. An employee who files a classification appeal is entitled to a copy of the classification appeal file. The Union is entitled to the same material upon request.

### **Section 3 – Classification Standards**

- A. Title 5 positions will be classified by the Department, comparing the duties, responsibilities and supervisory relationships in the official position description with the appropriate classification and job grading standard.
- B. The Union will be advised how to access current standards upon request. If these standards are not available electronically, copies will be provided to the Union by the appropriate Department official upon request. The Department will apply newly- issued OPM classification and job grading standards within a reasonable time. The Union will be provided new standards within a reasonable time after the Department receives them.
- C. Upon request, the Department will furnish the Union with copies of any Department guidance provided to OPM in connection with any classification review.

### **Section 4 – Effective Date**

The effective date of a personnel action taken as a result of an appeal should not be later than the beginning of the fourth pay period following the date of the decision.

## **ARTICLE 21 – COMPETENCIES**

### **Section 1 – Definition**

Competencies are written descriptions of the appropriate skills assessed by the Department in determining an employee's competence.

It is the Department's right to determine employee competence and, within parameters set by, for example, the Joint Commission on Accreditation of Healthcare Organizations and federal employment standards, to summarize competence assessments in written competencies.

### **Section 2**

- A. Competencies established for an employee's position shall be in writing and a copy provided to the employee when the employee enters a position or when a new competency is established.
- B. If an employee is unsure if he or she is competent to perform a specific task not ordinarily performed, the employee may inform the supervisor and request review of the competency associated with that task. The appropriate Department official will determine if the review is necessary and provide written feedback to the employee. The employee may request the written feedback be placed in the competency file.
- C. An employee may request remedial training on tasks associated with the employee's competencies. The Department will determine if remedial training is appropriate. If training is determined to be appropriate, it will be provided in accordance with Article 23 - Training and Career Development.
- D. Copies of competencies will be provided to the local union upon request. When the Department changes an employee's competency and that change triggers a duty to bargain under the Statute, the Department will give notice and bargain consistent with Article 13 - National Consultation Rights and Mid-Term Bargaining.

## **ARTICLE 22 – PERFORMANCE APPRAISAL**

### **Section 1 – Applicability**

This Article applies to Title 5 employees and those Title 38 employees appointed under 38 USC 7401(3) and 7405(a)(1)(B) (Hybrids) but is not applicable to employees appointed under 38 USC 7401(1), and 7405 (a)(1)(A).

### **Section 2 – Purpose**

- A. The goal of the performance appraisal system is to assist the Department and employees in:
  - 1. Maximizing their contribution to the accomplishment of the Department's mission and the employee's work goals;
  - 2. Identifying, communicating and clarifying work goals as well team accountability for accomplishing work goals when applicable;
  - 3. Identifying and addressing developmental needs for employees (and teams, when applicable);
  - 4. Assessing and improving employee performance;
  - 5. Being recognized and rewarded for employee accomplishments; and,
  - 6. Using the results of performance appraisals as a basis for appropriate personnel actions, when applicable.

- B. The performance appraisal system will be administered in accordance with applicable laws and government-wide regulations, including but limited to, 5 USC 4301 and 5 CFR, Part 430.
- C. The intent of the performance appraisal system is to provide an objective evaluation of the employee based on his or her individual performance and the established performance standards for the position which are documented on VA form 0750 or successor document. The Parties encourage open and ongoing communication between an employee and his or her supervisor regarding the performance appraisal process and any related performance concerns.
- D. Consistent with 5 CFR Part 451, including 5 CFR 451.104 and Article 24 - Employee Awards and Recognition, the Department may grant awards to employees when his or her performance, as reflected in the employee's most recent rating of record, is at the fully successful level or above.

### **Section 3 – Definitions**

Definitions for this Article are provided consistent with 5 CFR 430.203 and VA Handbook 5013.

- A. Appraisal - the process under which performance is reviewed and evaluated.
- B. Appraisal Period - the established period of time for which performance will be reviewed and a rating of record will be prepared.
- C. Critical Element - a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. Such elements shall be used to measure performance only at the individual level.
- D. Non-Critical Element - a dimension or aspect of individual, team, or organizational performance, exclusive of a critical element, that is used in assigning a summary level. Such elements may include, but are not limited to, objectives, goals, programs plans, work plans, and other means of expressing expected performance.
- E. Minimum Appraisal Period - the 90 day period during which an employee must have performed under communicated performance elements and standards that may result in a performance rating.
- F. Performance - accomplishment of work assignments or responsibilities.
- G. Performance Plan - all of the written or otherwise recorded, performance elements that set forth expected performance. A plan must include all critical and non-critical elements and their performance standards.
- H. Performance Rating - the written or otherwise recorded appraisal of performance compared to the performance standard(s) for each critical and non-critical element on which there has been an opportunity to perform for the minimum period. A performance rating may include the assignment of a summary level within a pattern, as specified in 5 CFR 430.208(d).

- I. Performance Standard - the management approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, and manner of performance.
- J. Progress Review - communicating with the employee about performance compared to the performance standards of critical and non-critical element.
- K. Rater - the official, usually the immediate supervisor, who is responsible for developing performance plans, providing feedback on progress reviews, appraising employee performance, and recommending a performance rating.
- L. Rating of Record - the performance rating prepared at the end of the appraisal period for performance of Department assigned duties over the entire period and the assignment of a summary level within a pattern, as specified in 5 CFR 430.208(d), or in accordance with 5 CFR 531.404(a)(1). These constitute official ratings of record referenced in this Agreement.
- M. Special Rating of Record - an appraisal done at other times than at the end of the appraisal period. For example, consistent with 5 CFR 430.208 when a rating of record cannot be prepared at the time specified, the appraisal period shall be extended. Once the conditions necessary to complete a rating of record have been met, a rating of record shall be prepared as soon as practicable.
- N. Summary Ratings - the record of the appraisal of each critical and non-critical element and the assignment of an overall rating. These ratings will be assigned in accordance with the following criteria:
  - 1. Outstanding - the achievement levels for all elements are designated as Exceptional.
  - 2. Excellent - the achievement levels for all critical elements are designated as Exceptional. Achievement levels for non-critical elements are designated as at least Fully Successful. Some, but not all non-critical elements may be designated as Exceptional.
  - 3. Fully Successful - the achievement level for at least one critical element is designated as Fully Successful. Achievement levels for other critical and non-critical elements are designated as at least Fully Successful or higher.
  - 4. Minimally Satisfactory - the achievement levels for all critical elements are designated as at least Fully Successful. However, the achievement level for one (or more) non-critical elements is designated as Less Than Fully Successful.
  - 5. Unacceptable - the achievement level for one (or more) critical elements is designated as Less Than Fully Successful.

#### **Section 4 – Performance Standards**

- A. The Parties agree that the Annual Performance plan is the key component of the performance management process and is foundational to accomplishing the organizational and Department strategic goals. Performance plans allow managers, employees and Department officials a way to measure what's working, determine positive outcomes and to

identify ways to improve employee performance. An employee's rating based on his or her performance plan is also used to recognize high performers.

- B. Consistent with law and government wide regulation, (including but not limited to 5 USC Chapter 43, 5 CFR Part 430.101, 5 CFR Part 430.102, 5 CFR Part 430.201, 5 CFR Part 432), OPM guidance on performance standards, and VA Handbook 5013, the Department will establish performance standards which will, to the maximum extent feasible, permit an accurate evaluation of job performance on the basis of objective criteria related to the position. Performance standards must be related to the employee's position description or functional statement, as applicable.
- C. A review of performance plans indicates performance standards are clear, understandable, measurable and attainable and are an effective tool for distinguishing between levels of performance.
- D. Department officials and employees must actively engage in reviewing achievable performance standards that are used in individual performance plans to ensure consistency with Department measurements.
- E. Supervisors and employees are encouraged to discuss expectations of performance at the beginning and mid-year timeframe of the rating period. This does not prevent the employee from requesting additional meetings throughout the rating period. The Parties encourage supervisors and employees to discuss how higher levels of achievement can be obtained with their critical and non-critical elements.
- F. The Parties agree that at the beginning of the rating period and at any time throughout the rating period, the rating official will explain to the employee information that is adequate to inform him or her of what is necessary to reach the levels of achievement for Fully Successful as well as Exceptional level on each element.
- G. The Rater will establish and communicate in writing to employees the critical and non-critical elements and performance standards, at the beginning of the appraisal period (normally within 30 days).
  - 1. Each employee will sign and date, acknowledging receipt of the performance standards.
  - 2. After initial issuance of critical and non-critical elements and performance standards, the elements and standards will be provided annually to employees.
- H. When a change to performance standards triggers a duty to bargain under the Statute, the Department will provide notice and bargain consistent with Article 13 - National Consultation Rights and Mid-Term Bargaining.
- I. The Department may modify performance standard during the appraisal period. The employee will not be rated against these modifications for a reasonable period of time, normally not to be less than 90 days.

## **Section 5 – Process**

- A. All bargaining unit employees will receive an annual performance appraisal. Consistent with VA Handbook 5013, the appraisal period is the one-year period that begins on October 1

and ends on September 30 unless otherwise designated by an Under Secretary, Assistant Secretary, or other key Department official. Employees must receive a written or otherwise recorded rating of record no later than 60 days following the end of the appraisal period. Consistent with 5 CFR 430.208(g), employees new to the Department (with less than 90 calendar days) as of October 1, will receive a delayed evaluation upon completion of the 90 calendar days.

- B. A Special Rating of Record will be issued to employees who change positions during the last 90 days of the appraisal year. The new Rater can either extend the rating period or concur with the previously issued performance rating.
- C. Although voluntary, an employee's self-assessment can serve as a helpful communication tool with his or her supervisor by supplementing the Rater's knowledge concerning their performance and related work contributions. The employee shall submit that self-assessment to their immediate supervisor within 10 working days after the end of the appraisal cycle.
- D. All changes in performance standards must be communicated to employees before being held responsible for such changes.
- E. Each employee's appraisal shall be strictly based on their performance against those elements that apply during the relevant appraisal cycle.

### **Section 6 – Communication**

The Department's policy on performance appraisal encourages supervisors to conduct periodic guidance sessions with employees regarding their job performance. The Department recognizes the need to identify and discuss employee performance on an ongoing basis. At a minimum, supervisors will conduct a mid-term evaluation. Confidential and informal guidance sessions may be useful to ensure that employees are kept current on the status of their performance.

### **Section 7 – Annual Performance Discussion**

The Department will discuss the annual performance rating and appraisal with the employee after the rating has been approved.

### **Section 8 – Performance Appraisals For Union Officials**

The use of approved official time for union representational functions will not be considered as a negative factor when evaluating an employee's performance standards. A union representative must perform Department assigned duties for the minimum appraisal period in order to be eligible for a performance rating. If a union representative has not performed Department assigned duties to become eligible for a performance appraisal, he or she cannot receive a substantive evaluation. However, he or she will be given an annual appraisal form that contains only a notation that the employee was a union representative who did not perform sufficient management assigned duties to be eligible for a performance appraisal and is therefore not subject to a substantive performance evaluation by the Department. For the purposes of personnel actions where a rating of record is required, such as a reduction in force, the last rating of record will be used.

### **Section 9 – Grievance Rights**

Consistent with Article 40 - Grievance Procedure, the employee has a right to grieve his or her performance evaluation. Grievances will begin at Step 2 of the grievance procedure and must be filed within 30 calendar days of the date the employee received a copy of the performance evaluation.

### **Section 10 – Actions Based on Unacceptable Performance**

- A. When the Department takes an action based on unacceptable performance consistent with 5 USC 4303 or 5 USC 7513, the Department will follow the law and the applicable implementing regulations under 5 CFR 432 and 5 CFR 752, as amended, and the employee will be advised of his or her appeal rights.
- B. Before an employee receives an unacceptable rating leading to a notice of proposed demotion, or removal for unacceptable performance under 5 USC 4303, the employee will be advised in writing of performance deficiencies, and be provided a 90-day period to demonstrate acceptable performance.
- C. If an employee has performed acceptably for one year from the beginning of an opportunity to demonstrate acceptable performance (in the critical element(s) for which the employee was afforded an opportunity to demonstrate acceptable performance), and the employee's performance again becomes unacceptable, the agency shall afford the employee an additional opportunity to demonstrate acceptable performance before determining whether to propose a reduction in grade or removal under this part.
- D. A proposed action may be based on instances of unacceptable performance which occur within a one year period ending on the date of the notice of the proposed action.

## **ARTICLE 23 – TRAINING AND CAREER DEVELOPMENT**

### **Section 1 – General Provisions**

- A. Training and development of employees is of critical importance in carrying out the mission of the Department. The Department will provide training and career development opportunities to employees of the bargaining unit, consistent with 5 USC 4103(a), 5 USC 4109, 5 CFR part 410 and VA Directive and Handbook 5015. The Department is responsible for ensuring that all employees receive the training necessary for the performance of the employees' assigned duties. The Department is responsible for determining how training funds and opportunities can best be utilized to maximize the usefulness of training to advance the VA's mission and related strategic goals.
- B. Nothing in this Section is intended to interfere with applicable merit promotion requirements or Title 38 career advancement procedures.

### **Section 2 – Local Training Committees**

- A. There shall be a facility level Training and Career Development Committee which will be authorized to make joint recommendations regarding training and career development programs.

B. Training Committee membership:

1. Each Local may appoint a representative on the facility level training committee if there is no previously negotiated agreement on membership. In addition, the Local may request additional members for the facility level training committee.
2. If a Local has previously negotiated an agreement regarding membership, it will remain in effect. If the facility makes a change to the training committee affecting union membership, including creation of subcommittees, the Department will meet all bargaining obligations under the Statute.
3. In the event a newly created Local comes into effect after the effective date of this agreement, the local parties, upon request, will negotiate membership for the local training committee. In the alternative, the parties will use the language from Section 2B1 above.

C. All field facilities must have a process in place to ensure the establishment of facility training priorities, to monitor progress of the facility's training and educational activities. Consistent with Executive Order 13160 and VA policy, including VA Handbook 5015 and VHA Directive 1018, the Department will ensure that VA employees and other individuals who participate in VA conducted education and training programs are not discriminated against based on race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent. Bargaining unit employees may file complaints under the provisions of Executive Order 13160 or in accordance with Article 40 - Grievance Procedure if they feel that they have been discriminated against regarding VA conducted education and training programs. Local training activities will be established pursuant to the Department's mission, strategic goals and training programs. If the facility makes a change to its training committee which triggers a duty to bargain under the Statute, it will provide notice and bargain consistent with Article 13 - National Consultation Rights and Mid-term Bargaining.

D. The committee will meet as needed to address training issues such as:

1. Orientation sessions for new employees;
2. In-service or on-the-job training to improve the employees' capability to perform their current jobs;
3. Training for career enhancement;
4. Cross-training and rotational assignments;
5. Funding for training;
6. Upward mobility; and,
7. Tuition support and reimbursement.

**Section 3 – Training Costs**

- A. The Department will pay all expenses, including tuition and travel, in connection with training required or requested by the Department to perform the duties of an employee's current position or a position to which an employee has been assigned.
- B. Depending upon the availability of funds and training priorities, the Department will also pay appropriate expenses for work-related training that will:
  - 1. Improve an employee's ability to perform his or her current job or a job the employee has been selected to fill through merit promotion; or,
  - 2. Increase an employee's knowledge or skills in connection with career growth or advancement opportunities; and,
  - 3. Approval of such training may also be contingent upon an agreement by the employee to share any costs with the Department.
- C. When resources for training are limited, approval for training funds will be based on fair criteria that are equitably applied in accordance with 5 CFR 410.306 and 410.307 (b).
- D. Travel related to training will be administered consistent with Article 19 - Official Travel and all applicable laws and regulations. When weighing training options, the Department will take into consideration the most cost effective means to provide the training. Travel for training will only take place when all alternative means of conducting the training have been considered and the Department determines that such alternatives are insufficient for achieving the stated purpose, goals and objectives of the training.

#### **Section 4 – Scheduling Training**

- A. When training required by the Department is conducted during an employee's regularly scheduled work hours, he or she will be granted excused absence to attend.
- B. When training is approved under Section 3B of this Article the Department will make a good faith effort to grant excused absences from work or make schedule adjustments to accommodate an employee's training or educational program.

#### **Section 5 – Training Information**

- A. The Department shall inform employees, at least annually, about training opportunities, policies, and nomination procedures. The Department will, upon request, advise individual employees of training opportunities that meet identified educational or career objectives.
- B. The Department will maintain up-to-date information about training courses, programs, and seminars conducted or sponsored by the Department or available from some other source. This information shall be accessible to employees and publicized in such a way as to provide adequate notice to interested employees.

#### **Section 6 – Notification**

- A. Employees will be notified in writing of the final approval of training requests as soon as possible but not more than 10 calendar days after the decision has been made.

Additionally, employees will be notified in writing of disapproved training requests as soon as possible, normally prior to the starting date of the training.

- B. Should an employee's request for training be disapproved solely for lack of funds, the employee may resubmit a request for training. When funds become available, the request will be given first consideration, in the order that they were originally received. Training requests, whether new or resubmitted, may be disapproved due to operational needs.
- C. Upon request, the Department will explain to the employee and the Local the reasons in writing why he or she was not selected for the training.

### **Section 7 – Educational Programs and Continuing Education**

As resources permit, the Department shall work with educational institutions and other training sources to develop opportunities for employees to participate in long term educational programs.

### **Section 8 – Tuition Support and Reimbursement**

- A. Employees who are eligible for receiving tuition support and reimbursement shall be informed of the availability of reimbursement funds and shall be given the opportunity to apply for the reimbursement funds.
- B. When a change in qualifications for a position mandates an additional requirement for an employee already holding that position, the Department will pay for or provide the education needed for the employee to meet the new qualifications unless the employee is grandfathered in or taken out of the position.
- C. Bargaining unit employees shall have an equitable opportunity to compete for the receipt of available tuition support or reimbursement funds.
- D. All employees will be timely provided with information on the availability of funds for tuition support and reimbursement and on the processes by which an employee may apply for any available funds.

## **ARTICLE 24 – EMPLOYEE AWARDS AND RECOGNITION**

### **Section 1 – Background and Purpose**

- A. Recognition of employees through monetary and non-monetary awards reflects the Parties' efforts to promote continuous improvement in the Department's performance, in accordance with 5 USC Chapter 45, 5 CFR Part 451 and VA Directive and Handbook 5017.
- B. The employee recognition program provides a positive indication of the Parties' commitment to providing quality service to the Department.
- C. The employee awards and recognition program, as described in this Article, has the following characteristics:

1. The Parties recognize that awards and recognition can assist in motivating employees in meeting the Department's objectives for servicing Veterans and will contribute to the efficiency of VA operations and its economy.
2. The Parties recognize that the Department, the Locals and employees have important roles in identifying and recognizing employees deserving of awards.
3. The Department's awards and recognition program shall recognize the accomplishments of employees as individuals and as members of groups or teams.
4. The intent of this program is to promote a positive work environment and to link awards to recognizing employee's contributions for enhancing the VA's mission, regardless of changes in the Department's organizational structure, work processes or work initiatives.

## **Section 2 – Policy**

- A. There is no limit to the number of awards that employees may receive or the frequency with which they may receive awards unless otherwise proscribed by law, government-wide regulation or in this Article.
- B. The Department shall develop award programs for employees covered by this Agreement. Pursuant to 5 CFR 451.103 the Department shall develop one or more award programs for employees covered by this agreement:
  1. In accordance with 5 CFR 451.103 (b) the Department shall encourage employees to be involved in developing such programs when agencies involve employees, the involvement will be in accordance with law.
  2. Each Local union will have the right to select the bargaining unit representative(s) to the awards panel consistent with Section 4, Award Panels below. Locals will have the right to select employees to participate in such programs.
  3. The Department's award programs will adhere to government-wide regulations and law.
  4. Pursuant to 5 CFR 451.103 (c) (1) the programs shall obligate funds consistent with applicable Department financial management controls.
  5. Pursuant to 5 CFR 451.103 (c) (2) the Department will document justification for awards that are not based on a rating of records as defined by 5 CFR 430.203.
  6. There is no entitlement to any monetary or non-monetary award. Awards are given at the discretion of the Department.
  7. An employee may grieve the Department's decision regarding an award covered by this Article in accordance with Article 40 - Grievance Procedure, unless otherwise prohibited by this Agreement.
- C. The Department may grant a cash, honorary or informal recognition award, or grant time off without charge to leave when considering employees for awards or recognition. The relative significance and impact of their contributions will be considered in determining

which type of award constitutes appropriate recognition and, for monetary awards, in determining the amount of money to be granted.

### **Section 3 – Types of Awards**

Awards which employees may be eligible to receive include but are not limited to:

1. Special Contribution Award;
2. Instant/On the Spot Award;
3. Suggestion Award;
4. Time off Award;
5. Quality Step Increase (QSI);
6. Employee of the Month and Employee of the Year.

### **Section 4 – Award Panels**

- A. Each facility will establish awards panels consisting of an equal number of management and bargaining unit employees. The composition and membership of each panel will be decided jointly by the Local and the Department. The Local will designate the bargaining unit panel members. Panel decisions will be made by consensus and will then be forwarded to the Director of the facility. Awards panels will be formed at the beginning of assessment period.
- B. The goal of the panel is to ensure an impartial review of awards, which will be applied in a consistent, standard manner, based on mission-related criteria. The panel is further responsible for adopting rules and other operating parameters for how the panel meets and conducts its review. Panel members will maintain the strictest confidentiality and avoid conflicts of interest.
- C. The panel may recommend a cash, honorary or informal recognition award, or recommend time off without charge to leave when considering employees for awards or recognition. The relative significance and impact of their contributions will be considered in determining which type of award constitutes appropriate recognition and for monetary awards, in determining the amount of money to be granted.
- D. Panel recommendations will be made by consensus and will then be forwarded to the facility Director or designee for final decision. If the final decision is contrary to the recommendations of the panel, the panel may request and the Director or designee should provide an explanation of the decision in order to improve the recommending process.
- E. Awards will be processed in an expeditious manner.
- F. The Department will provide an award recipient with written documentation that clearly articulates the specific reasons that the employee received the award. Employees are encouraged to relate this information to specific evaluation criteria when completing applications for merit promotion.

## **Section 5 – Performance Awards**

Employees who receive ratings of outstanding or excellent may be eligible to receive a superior performance award. An employee who receives a rating of fully successful may be eligible for a performance award. The Department will make the final determination regarding the amount, if any, an eligible employee may receive.

## **Section 6 – Monetary Awards**

- A. Special Contribution Awards - the special contribution award is a special act or service award which recognizes individuals or group for major accomplishments or contributions which have promoted the mission of the organization. Award amounts should be linked to the significance and impact of the accomplishment or contribution. A special contribution award may be made to an individual employee or to a group. A group may consist of individuals from a single organization or multiple components/offices/units.
- B. Instant/On the Spot Awards - this is a special act or service award given to an employee for noteworthy contributions or accomplishments in the public interest which are connected with or related to the recipient's official employment. The distinction between a special contribution award and an instant/on the spot award rests in the relative significance of contribution or accomplishment.
- C. Suggestion Awards - the Department will encourage employees to file suggestions under the Department's Suggestion Program. Suggestions will be considered in a fair and equitable manner. Suggestion awards will be appropriate for tangible suggestions, intangible suggestions, and problem identification as defined in the Department's Suggestion Program.
  - 1. In the event no decision is made regarding adoption or non-adoption of a suggestion within 90 days of submission, the employee, upon request, will be given a written or oral status report.
  - 2. Non-adoption of employee suggestions is to be written and contain specific reasons for non-adoption.
  - 3. If the idea set forth in a rejected suggestion is later adopted, the appropriate suggestion coordinator will reopen the case for award consideration if the matter is brought to his attention within two years of the date of rejection notice.
- D. QSI Awards - quality step increases are not required, but they may be granted to employees whose overall performance is deemed exceptional as demonstrated by making significant contribution to the accomplishment of organizational goals and objectives, and exceeding the standards on all the elements in the individual's performance appraisal plan. Employees in occupations identified in 38 USC 7401 (3) are eligible for one step special advancements for performance, subject to meeting the criteria for a QSI.

## **Section 7 – Time-Off Awards**

- A. Time off awards may be granted to an individual or group of employees for contributions that benefit the Department.
- B. These awards may be granted for contributions such as, but not limited to, the following:

1. A significant contribution involving completion of a difficult project or assignment of importance to the mission of the Department;
  2. The completion of a specific assignment or project in advance of an established deadline and with favorable results;
  3. Displaying unusual initiative, innovation, or creativity in completing a project or improving the operation of a program or service; or,
  4. Displaying unusual courtesy or responsiveness to the public which clearly demonstrates performance beyond the call of duty and which produces positive results for the Department.
- C. Time off awards may be granted for exemplary work by an employee for participation in the operation of special campaigns or programs, (i.e. Combined Federal Campaign, blood drive, etc.) so long as the award is not based on any solicitations done by the employee. These awards may not exceed one workday per activity.

## **ARTICLE 25 – DETAILS, REASSIGNMENTS AND TEMPORARY PROMOTIONS**

### **Section 1 – Definitions**

- A. A detail is the temporary assignment of an employee to a different position for a specified period of time with the employee returning to his regular duties at the end of the detail.
- B. A reassignment is a change of an employee, while serving continuously within the Department, from one position to another without promotion or demotion.
- C. A shift change is a change of an employee, from one location to another or from one shift to another, while remaining in the current position and service.
- D. A temporary promotion is a temporary detail of an employee to a higher graded position for a specified period of time, with the employee returning to his or her permanent position upon the expiration of the temporary detail.

### **Section 2 – General**

- A. Details are intended only for the needs of the Department's work requirements when necessary services cannot be obtained by other desirable or practicable means. Consistent with 5 USC 7106, 5 CFR Part 335, Subpart (a) general provisions, VA Handbook 5005, the Department determines the qualifications for a detail or temporary promotion and which employees meet those qualifications.
- B. Details of one week or more shall be recorded and maintained in the employees' personnel record.
- C. Assignment of Title 38 employees is a matter of professional conduct or competence, in that it involves direct patient care and clinical competence (e.g., specific competencies of individual employees on duty in a given unit at a given time may impact the quality of patient

care available on that unit). Accordingly, the following provisions must be read consistently with the exemptions from collective bargaining provided by 38 USC 7422(b) and to allow for exceptions, within the Department's sole discretion, to meet patient care needs.

- D. Subject to the Department's reserved rights under 5 USC 7106(a)(2) and 38 USC 7422(b), the following procedures shall apply when offering noncompetitive details of more than one and up to 60 days to both classified and unclassified positions:
1. The Department will canvass the qualified employees to determine if anyone wishes to be detailed, if the same number of volunteers as vacancies exists, they shall be selected.
  2. If more employees volunteer than vacancies exist, the Department will select from the qualified volunteers. Seniority, as defined in Article 60 - Seniority, will be the selection criterion.
  3. If no employee volunteers, then the least senior qualified employee will be selected.
  4. If there are fewer volunteers than vacancies, then the volunteers will be selected and additional persons will be selected as in D2 above, the Department will notify the Local of all details.
  5. Pursuant to this section, if a subsequent detail is required the Department will rotate the detail among qualified employees based on reverse seniority from a list of qualified employees who have not served on a detail.
  6. Additional procedures and processes for details not addressed in this Article are subjects for local negotiations.
- E. Details outside of the duty station or work site if different than the duty station the Department shall accomplish a case-by-case analysis comparing the distance from the old duty station or work site to the employee's residence with the distance from the new duty station to the employee's residence. When a significant difference exists, the employee should be given duty time for travels commensurate with the new duty station or work site.
- F. All procedures and processes, either in this Article or negotiated at the local level consistent with the provisions in this Article, for details, reassignments and temporary promotions, shall be administered in a fair and equitable manner.

### **Section 3 – Temporary Promotions – Title 5 and Hybrid Title 38**

- A. Employees detailed to a higher-graded position for a period of more than 10 consecutive workdays must be temporarily promoted. The employee will be paid for the temporary promotion beginning the first day of the detail. The temporary promotion should be initiated at the earliest date it is known by the Department that the detail is expected to exceed 10 consecutive workdays.
- B. The 10 consecutive workday provision will not be circumvented by rotating employees into a higher-graded position for less than 10 days in order to avoid the higher rate of pay.

- C. For the purposes of this section, a General Schedule employee who performs the grade controlling duties of a higher-graded position for at least 25% of the time, or a Wage Grade employee who performs higher graded duties on a regular and recurring basis, shall be temporarily promoted.
- D. Temporary promotions in excess of 60 calendar days shall be filled through competitive procedures. Temporary promotions of less than 60 days shall be made in accordance with Section 1.
- E. Temporary promotions for Hybrid Title 38 employees must be consistent with Article 69 and VA Handbook 5005, Part III, Chapter 4, Section 8.

#### **Section 4 – Restriction on Lower-Graded Duties**

Should the requirements of the Department necessitate a detail to a lower-graded position, this will in no way adversely affect the detailed employee's salary, classification, or position of record.

#### **Section 5 – Representatives**

- A. The Department will make every effort to avoid placing a Local representative on a detail that would prevent that official from performing his or her representational functions. The Department agrees to notify, in writing, the appropriate Local President prior to placing any designated Local representatives on a detail, away from the representative's normal duty station.
- B. It is recognized that special shift assignments for certain local officials facilitates beneficial communications between the Department and the Local. Upon request, the Department will discuss with the local union any requests for a shift change to facilitate labor-management communications. If after discussion the local parties do not resolve the issue, the local union may request to negotiate a shift change for a union official to facilitate labor-management communications while that individual is serving in a representational capacity. These negotiations will be conducted consistent with Article 13 - National Consultation Rights and Mid-Term Bargaining.

#### **Section 6 – Voluntary Reassignment**

- A. Employees seeking voluntary reassignments within their departmental service shall be entitled to prompt and fair consideration.
- B. The Department may determine if they wish to post a vacant position through this Article or through competitive procedures and will be done consistent with 38 USC 7422, Article 66 - Title 38 Vacancy Announcements and Article 26 - Merit Promotion, as appropriate.
- C. Consistent with this Article, all solicitations for voluntary reassignments to internal departmental service vacancies will be distributed to eligible employees 30 calendar days prior to filling the positions through voluntary reassignments. Once the Department has determined that the employee(s) is qualified for the position, the Department will consider for selection in this order:

1. candidates for reassignment because of hardship situations with ties resolved by seniority, as defined in Article 60 - Seniority;
  2. other voluntary requests for reassignment, with ties resolved by seniority, as defined in Article 60 - Seniority.
- D. When the Department solicits volunteers for reassignment under this section, the Department will provide a copy of the solicitation to the local union at the same time. Additionally, the Department will provide to the local union the selectee and list of employees who put in for the reassignment, if applicable. This written notice will be provided within 10 calendar days from the date of the decision and will include the date of reassignment.

### **Section 7– Department Initiated Reassignments**

- A. The Department has the right to reassign employees based upon operational needs. The parties agree that giving as much advance notice as possible, prior to an involuntary reassignment, benefits employees. Absent emergent circumstances, an employee and the local will receive at least 30 calendar days advance notice of selection for a Department initiated reassignment as well as the reasons for the Department initiated reassignment.
- B. In all emergent circumstances the employee and the local will be provided reasonable advance written notice explaining the circumstances.
- C. The Department will give full consideration to assertions by the locals or employees that the reassignment will cause undue personal hardship. It is the responsibility of the employee to demonstrate to the Department that a significant hardship exists.
- D. The Department will adhere to the following procedures prior to effecting a Department initiated reassignment of an employee(s):
1. The Department will determine which employees are qualified for the reassignment.
  2. The Department will solicit volunteers from within the pool of qualified employees, 30 days in advance of a Department initiated reassignment.
  3. A Department initiated reassignment of an emergent nature will be accomplished by detailing qualified employees on a temporary basis until such time the procedures for involuntary reassignment have been completed.
  4. If there are more volunteers than needed, the Department will reassign the employee(s) with the greatest amount of seniority in accordance with Article 60 - Seniority; and
  5. If there are not enough volunteers, the Department will reassign the employee(s) with the least amount of seniority in accordance with Article 60 - Seniority.

### **Section 8 – Shift Change and Relocation**

Employees may submit a request for either a change in location or a change in shift within the same service that has the same advancement potential. In filling such a vacancy, seniority, in accordance with Article 60 - Seniority, will be considered and the request will be granted if the

employee has the requisite skills and abilities, provided such relocation would be consistent with effective and efficient staffing. The Department reserves the right to make the assignments based on other good faith considerations in assuring effective management of the work force.

### **Section 9 – Relocation Expenses**

An employee whose duty station or work site changes either involuntarily or due to promotion shall be entitled to relocation expenses in accordance with regulations.

### **Section 10 – Voluntary Demotion / Downgrade**

Prior to acting on an employee's request for a voluntary reduction in grade, the Department will assure that the employee has been fully apprised in writing about the effects of such an action, and the employee has been given an explanation of other alternatives relevant to the particular case.

### **Section 11 – Reassignments**

- A. Reassignments shall not be used as punishment, harassment, or reprisal.
- B. The parties, at the local level, may negotiate additional processes and procedures regarding voluntary and Department initiated reassignments that are not covered in this Article.
- C. In instances of Department initiated reassignments, all previously requested and approved leave will be transferred with the employee in accordance with Article 17 - Time and Leave. When an employee is voluntarily reassigned, the employee will communicate any previously approved leave, the Department will make reasonable efforts that previously requested and approved leave will be transferred. If the department official is unable to transfer approved leave, the employee will be provided a written explanation.

## **ARTICLE 26 – MERIT PROMOTION**

**Applicable to Title 5 employees only (except Section 6, Vacancy Announcements, which also applies to Hybrid Title 38 employees - See Article 62, Hybrid Title 38 below):**

### **Section 1 – Purpose and Policy**

The Parties agree that the purpose and intent of the provisions contained herein are to ensure that promotions are made equitably and in a consistent manner. Promotions shall be based solely on job-related criteria, and without regard to political, religious, labor organization affiliation or non-affiliation, marital status, race, color, sex, sexual orientation, national origin, non-disqualifying disabling condition or age. This Article sets forth the merit promotion system, policies, and procedures applicable to bargaining unit positions in the Department. Additionally, the Parties agree to follow the government-wide regulations regarding merit promotion contained in Title 5 Code of Federal Regulations (CFR) including, but not limited to, 5 CFR Part 335.

### **Section 2 – Development of Career Pathways**

- A. The Parties will explore various means of enhancing career opportunities including but not

limited to career ladder, administration movement, broad banding, etc.

- B. The Parties are committed to establishing career ladder positions within the organization in those situations where positions and functions can be grouped in a way compatible with program and work considerations.
- C. The Parties agree to develop and implement career ladder positions through joint labor-management involvement. Labor and management will work together as follows:
  - 1. Participation will include Local Union Officials and the Local may recommend bargaining unit employees to serve in a non-representational capacity to provide input in the development and review of career ladder positions.
  - 2. The Parties will have appropriate Human Resource and classification support.
  - 3. The Parties will review existing positions and work functions within the respective component in all job categories (i.e. professional, technical, administrative, clerical, wage grade). This review may include recommendations to consolidate or revise existing positions and the development of new career ladder positions when appropriate.
  - 4. The Parties may also review and explore the development of career ladders, which provide opportunities for both lateral movement between career ladder positions and promotion to higher grade career ladder positions.

### **Section 3 – Career Ladder Plans and Advancement**

- A. While promotions within career ladders are neither automatic nor mandatory, career advancement is the intent and expectation in the career ladder system.
- B. A career ladder is a series of positions of increasing difficulty in the same line of work through which an employee may progress from the entry level to the full performance level.
- C. The full performance level is the highest grade level to which an employee may be promoted non-competitively within a career ladder.
- D. An employee is eligible for a career ladder promotion provided all of the following conditions have been met:
  - 1. The employee has demonstrated the ability to perform the higher grade level duties;
  - 2. The employee has completed at least one year in the current grade;
  - 3. There is sufficient work at the higher grade level position;
  - 4. Sufficient funds are available; and
  - 5. The employee's current written performance appraisal is acceptable consistent with Section 3L below.

- E. The Department normally will complete its review and approval of an employee's eligibility for a career ladder promotion on or before the 30<sup>th</sup> calendar day after the employee has completed one year in his or her current grade.
- F. If the review and approval is delayed beyond the 30<sup>th</sup> calendar day, and it is determined that the employee qualified for a career ladder promotion, the promotion will be retroactive to the beginning of the first pay period after the pay period in which the requirements were met, consistent with the Back Pay Act, 5 USC 5596 and other laws, government-wide regulations and/or VA policy.
- G. Additionally, when the Department knows in advance that the budget or availability of work may impact on promotion in the career ladder; it should not wait until the end of year discussion to inform an employee that there may be problems regarding a career ladder promotion. Whether the decision not to promote is made near the time of the year end appraisal or not, the rationale behind the decision will be discussed thoroughly with the Local and employee. A decision not to promote based on performance will be addressed consistent with Section 3M below.
- H. The Local and employee will be provided, within seven calendar days, written notice with reasons as to why the employee is not being promoted.
  - 1. In the instance that the employee is not promoted due to lack of available higher graded work or lack of funds, the Department will conduct subsequent reviews at six-month intervals, and promote or notify the employee, consistent with the procedures in this section, above. An employee not promoted will be notified of the reason(s) for the decision. The reasons will be provided in writing within seven calendar days to both the Local and the employee.
  - 2. If an employee is denied a career ladder promotion because of the unavailability of enough work at the next grade, consistent with this Agreement, including but not limited to Article 25 - Details, Reassignments and Temporary Promotions and VA policy, the Department agrees that, if an employee temporarily performs the work of the higher-graded position for the required amount of time the employee will be temporarily promoted and paid appropriately.
- I. Career ladder positions help employees develop to successfully perform higher level duties through training and incremental assignment(s) of more complex work. The responsibilities assigned to the entry levels of career ladder positions will involve more basic skills and knowledge compared to journey-level responsibilities. The responsibilities at each level of a career ladder position will be communicated to employees through the position description or career ladder plan. Career Ladder Plans or position descriptions will be tailored to the complexity of the job duties and will permit individuals to learn and assume the fuller range of duties.
- J. A Career Ladder Plan or position description will be established for each career ladder position. The Career Ladder Plan or position description will outline the objective criteria for each grade level which an employee must meet in order to be promoted. A copy of the Plan or position description will be given to each employee upon entry into the career ladder and when the employee is promoted to a new level of the career ladder. The employee will also be advised of their earliest date of potential promotion eligibility.

- K. Consistent with Article 13 - National Consultation Rights and Mid-Term Bargaining, the Department will provide notice and negotiate if a duty to bargain is triggered under the Statute due to the creation or revision of a position description or career ladder plan. The employee will be provided with a copy of any revised Career Ladder Plan within 30 calendar days of such revision.
- L. Consistent with 5 CFR 335.104, to be eligible for career ladder promotion, an employee must have a current rating of record of "Fully Successful" or higher and must not rate below "Fully Successful" on a critical element that is also critical to performance at the next higher grade of the career ladder.
- M. If an employee is not meeting the performance criteria for promotion, the employee will be given a written notice at least 60 calendar days prior to the earliest date of promotion eligibility. The written notice will state what the employee needs to do to meet the promotion plan performance criteria. Should a Career Ladder Plan or position description require only a three-month training period, the above notice shall be a reasonable period prior to the earliest date of promotion eligibility.
  - 1. If the employee is making progress, the supervisor will ensure that the employee has the opportunity to acquire pertinent skills and knowledge and to demonstrate that they meet performance promotion requirements as soon as feasible.
  - 2. If the employee is experiencing problems, the provisions in Section 3, Paragraph O are applicable.
- N. Consistent with law, government-wide regulations and/or VA policy, in the event the employee met the promotion criteria, but the appropriate management official failed to initiate the promotion timely, the promotion will be retroactive to the beginning of the first pay period after the pay period in which the requirements were met.
- O. At any time a supervisor and/or employee recognizes the need for assistance in meeting the career ladder advancement criteria, the supervisor and employee will develop a plan tailored to assist the employee in meeting the criteria. The plan should include all applicable training, as well as any other appropriate support. At the request of the employee, the Local may provide assistance.
- P. If a non-probationary employee fails to meet the promotion criteria due to performance after the appropriate assistance, the Department may:
  - 1. Provide the employee with additional time to meet the promotion criteria; or
  - 2. Assign the employee duties commensurate with their current grade. The Career Ladder Plan may end, and the employee will remain at the level they attained within the career ladder. The employee may be reinstated back into the career ladder plan non-competitively if the employee remains in the position covered by the Career Ladder Plan; or
  - 3. The employee may be assigned to another position at the same grade and step.

#### **Section 4 – Applicability of Competitive Procedures**

- A. The procedures for vacancies filled under competitive actions are described in this Article.
- B. Promotions - Any selection for promotion must be made on a competitive basis unless it is excluded by Section 5 below.
- C. Reassignments/Changes to Lower Grade - Any selection to a position that provides specialized experience (Job Qualification System for Trades and Labor Occupations, OPM Handbook X-118C or appropriate qualification standards) that the employee does not already have and is required for subsequent promotion to a designated higher-graded position and/or to a position with known promotion potential must be made on a competitive basis.
- D. Details - Competitive procedures will be applicable to any selection for detail of more than 60 calendar days to a higher-graded position, to a position with known promotion potential, or a position which provides specialized experience (Job Qualification System for Trades and Labor Occupations, OPM Handbook X-118C or appropriate qualification standards) required for subsequent promotion to a designated higher-graded position. All details will be consistent with Article 25 - Details, Reassignments and Temporary Promotions.
- E. Training - Competitive procedures will be applicable to selections for training when eligibility for promotion to a particular position depends on whether the employee has completed that training.
- F. Appointments - Competitive procedures apply to the transfer of a Federal employee or to the reinstatement of a former Federal employee to a position above the highest grade previously held permanently (unless the position is a higher-graded successor position as described in Section 5, Paragraph A7 of this Article) or to a position at or below that grade if the position has promotion potential above the highest grade previously held permanently. When competitive procedures apply to outside candidates the Department will utilize the procedures regarding area of consideration as outlined in Section 6D below.

### **Section 5 – Applicability of Noncompetitive Actions**

- A. Promotions - The following promotion actions may be taken on a noncompetitive basis unless otherwise provided:
  1. Promotion of the incumbent in a position that is reclassified at a higher grade due to the accretion of additional duties and responsibilities and not as the result of a planned management action.
  2. Promotion of an incumbent or an individual entitled to re-employment rights to a position that is reclassified to a higher grade without significant change in duties or responsibilities either on the basis of a new classification standard or as the result of correction of an original classification error. When the incumbent of the upgraded position meets the legal requirements and qualification standards for promotion to the higher grade, the incumbent will be promoted.
  3. Promotion of an employee previously selected competitively for a lower grade of a career ladder.
  4. Promotion after receiving priority consideration.

5. Promotion of an employee when directed by authorized authorities (i.e. judges, arbitrators, FLRA, and other appropriate authorities).
  6. The Department may non-competitively reinstate, transfer, or promote an employee up to the highest grade previously held on a permanent basis under career or career-conditional appointment, provided the employee was not demoted or separated from that grade for performance or conduct reasons.
  7. Temporary promotions to a higher grade totaling 60 calendar days or less during any 12 month period. If a temporary promotion which was not expected to exceed 60 calendar days was originally made on a noncompetitive basis, any extension beyond 60 calendar days must be made under competitive procedures.
  8. Career ladder promotions following noncompetitive conversion of a student through the Pathways Program consistent with 5 CFR 213.3402 and 5 CFR 362 subpart B.
  9. Promotion of an employee covered by an approved training agreement.
  10. Promotion of an employee placed competitively in a trainee position.
  11. Any other noncompetitive action authorized by law or existing government-wide regulation.
- B. Reassignments/Changes to Lower Grade - A reassignment or change to a lower grade to a position that does not provide specialized experience (Job Qualification System for Trades and Labor Occupations, OPM Handbook X-118C) that the employee does not already have and is required for subsequent promotion to a designated higher grade position or to a position having no known promotion potential may be taken on a noncompetitive basis.
- C. Details - The following details may be made on a noncompetitive basis:
1. Details of 60 calendar days or less to a higher-graded position (see Article 25 - Details, Reassignments and Temporary Promotions).
  2. Details of 60 calendar days or less to a position at the same or lower grade with known promotional potential or to a position which provides specialized experience (Job Qualification System for Trades and Labor Occupations, OPM Handbook X-118C or appropriate qualification standards) required for subsequent promotion to a designated higher-graded position.
  3. Details to a position at the same or lower grade with no known promotion potential or to a position which does not provide specialized experience (Job Qualification System for Trades and Labor Occupations, OPM Handbook X-118C or appropriate qualification standards) required for subsequent promotion to a designated higher- graded position.
  4. Details to unclassified duties.
- D. Other Noncompetitive Actions:
1. Conversion of an employee from a temporary promotion to a permanent promotion in

the same position and duty station provided the vacancy announcement for the temporary promotion indicated that the promotion could later become permanent.

2. Selection from an OPM approved register.
3. Transfer of a Federal employee or reinstatement of a former Federal employee (including conversion to reinstatement from a temporary appointment) to a position at the same or lower grade than the highest permanent grade held under a career or career-conditional appointment provided the candidate was not demoted or separated for performance or conduct reasons from a higher grade, and also provided that the position does not have known promotion potential to a grade higher than the highest permanent grade held.
4. Reinstatement to the same career ladder position for which an employee was previously selected competitively or to a similar career ladder position having similar qualification requirements and having no greater known promotion potential.
5. Reinstatement of a former VA employee to a position which is the higher-graded successor to a position they previously held. Such reinstatements may be made non-competitively when classification of the successor position is based on the establishment of a new position classification standard or the revision of a position classification standard.
6. A position change permitted by reduction-in-force regulations.
7. Consideration or selection of:
  - a. Disabled Veterans under 5 CFR 315.604.
  - b. Disabled Veterans under 5 CFR 315.707.
  - c. Cooperative education students under 5 CFR 213.
  - d. Veterans Readjustment Appointments under 5 CFR 307.
  - e. Severely handicapped appointments under 5 CFR 213.3102 (u).
  - f. Schedule A & B Excepted Appointments.
  - g. Any other noncompetitive action authorized by law or existing government-wide regulation.
- E. Additional procedures for noncompetitive details and reassignments are described in Article 25 - Details, Reassignments and Temporary Promotions.

## **Section 6 – Vacancy Announcements, Rating and Ranking and Areas of Consideration**

- A. All positions to be competitively filled in the bargaining unit by actions covered by this Article shall be posted, unless filled under Section 5, which provides for exclusions from coverage. For the same type of vacancy (title, series, and grade and area of consideration), a certificate may be used for up to 90 calendar days to refer candidates without re-announcing

the vacancy.

- B. Vacancy announcements may be announced simultaneously internally and externally.
- C. In accordance with statutory and regulatory requirements, candidates will be rated and ranked and best-qualified candidates identified.
- D. This section will be applied consistent with law and government wide regulation, including but not limited to Veteran Employment Opportunities Act, 5 CFR Part 330, Subpart F and G. Among candidates who are determined to be best-qualified, internal candidates will be given first and full consideration as follows:
  - 1. First - Facility-wide (including remote offices under the facility, such as a CBOC) except:
    - a. This area may be made more narrow or expanded through mutual written agreement.
    - b. However, where evidence suggests that the first area of consideration is not expected to produce at least three qualified candidates, it may be expanded to the second area when the vacancy is initially announced. The vacancy announcement will identify the expanded area of consideration.
  - 2. Second - VA-wide
  - 3. Third:
    - a. Reassignments/demotions from outside the Department to positions with higher known promotion potential.
    - b. Reinstatements to positions at a higher grade or with higher known potential.
    - c. Transfers from outside the Department to positions at a higher grade or with higher known potential.
- E. Consideration of bargaining unit employees as promotion or promotion-potential candidates within the area of consideration will be considered as follows:
  - 1. The employee must submit the required application and supporting documents to the appropriate servicing human resources (HR) office.
  - 2. The applicant shall indicate thereon the specific position or types of positions, and location(s) for which the employee wants to be considered.
  - 3. To ensure full consideration, employees should include on their application information relevant to the assessment criteria for the position in which they are interested.
  - 4. In order to be considered for a particular vacancy, the employee must have submitted the required documents prior to the closing date of the announcement.
- F. Vacancy Announcements will include, at a minimum:
  - 1. Statement of nondiscrimination;

2. Announcement number and opening and closing dates;
3. Position number(s), title(s), series, and grade(s);
4. Number of vacancies to be filled;
5. Promotional test to be used, if any;
6. Geographic and organizational location;
7. Time-in-grade requirements, if any;
8. Known promotion potential of the position, if any;
9. Area of consideration;
10. Summary of qualification requirements and the major duties of the position;
11. Hours of work and/or the availability of alternative work schedule options;
12. If appropriate, a statement that the vacant position is a trainee position leading to a noncompetitive promotion and conditions for promotion;
13. Permanent or temporary nature of vacancy and duration, if temporary;
14. Filing instructions;
15. Name and telephone number of the individual to contact for additional information relating to the announcement; and
16. The servicing HR office or the address where the application materials are to be submitted.

G. Career ladder vacancies and vacancies covered by training agreements may be announced at any or all grades. The Local will be provided with written notice of any changes in the posting of these announcements, prior to being posted.

H. Posting and Distribution of Vacancy Announcements.

1. The Department agrees to provide a copy of vacancy announcements to the Local when vacancies are posted.
2. The Department will post vacancy announcements on bulletin boards, the facility website, and USAJobs, as applicable and make copies available to employees.
3. Additionally, specific procedures for posting and distribution at facilities, integrated facilities, and remote facilities may be negotiated by the local parties consistent with Article 13 - National Consultation Rights and Mid-Term Bargaining.
4. Individual vacancy announcements will remain open and posted for 15 calendar days. However, the following exceptions apply.

- a. Scheduled employee absence of three weeks or less - Employees temporarily absent on approved leave, detail, at training courses, or on official business, for periods not to exceed three weeks may, upon their return, review position vacancies announced and closed during their absence, and make application for such vacancies in which they are interested. Such late applications must be submitted within seven calendar days after return to duty and must be accompanied by a statement prepared and signed by the employee and also signed by his/her supervisor explaining the dates and reason(s) for the employee's absence. Employees filing delayed applications under this provision will be considered only for those vacancies for which a best-qualified list has not yet been prepared.
- b. Exceptions for Late Filings – In instances when a Panel is not yet convened and the employee was unable to timely apply for a vacancy announcement; the Department may accept a late filing for good cause. In such instances, employees are responsible for submitting a complete application by close of business on the seventh calendar day after the closing date of the vacancy announcement.
- I. Open continuous announcements will remain posted at all times. When it has been determined that an open continuous vacancy will be filled, a cut-off notice will be posted in order for all interested employees to apply.
- J. Amending Vacancy Announcements - If a vacancy announcement has been posted and is later found to contain a substantive error concerning items listed in Section 6F, the announcement will be amended if the selecting official still intends to fill the position under the competitive process. The Department will notify the Local when such action is taken. The amendment should cite the change(s) and indicate whether or not the original applicants need to reapply in order to be considered.
- K. Vacancy Announcement/Locating Candidates - The Local and each applicant will be notified in writing if an announcement is canceled and will be provided with a reason for the cancellation. However, such cancellations will not be used to compromise merit promotion principles.

**Section 7 – Knowledge, Skills, Abilities and Other Characteristics**

- A. The Parties understand that Knowledge, Skills, Abilities and Other Characteristics (KSAO's) are or have been eliminated in most cases, but where they are still being utilized in VA the following information will be used in relation to KSAO's:
- B. Knowledge, skills, abilities, and other characteristics or KSAOs are:
  - 1. Knowledge: a body of learned information used directly on the job.
  - 2. Skill: a present competence to perform a skill, unlike ability, involves observable, quantifiable, and measurable performance parameters such as typing or pipefitting.
  - 3. Ability: the power to perform an activity at the present time. Ability is evidenced by the performance of some activity or work and should not be confused with an aptitude, which is only a potential for performing an activity.

4. Other characteristics must be directly observable or measurable and job related.
- C. In the event that KSAOs are established or utilized for a position, they will be derived from the duties and responsibilities of the position. Informational copies will be provided to the Local as part of the vacancy announcement.

### **Section 8 – Panel for Competitive Action**

- A. Panel Membership Requirements – The Department will instruct panel members in the tasks necessary to perform the Panel's function.
- B. Panels for bargaining unit positions will include two bargaining unit employees chosen with the concurrence of the Local. Absent mutual agreement, The Department reserves the right to appoint Panel members following discussions with the Local and informing the Local of the reasons for its decision.
- C. The Parties recognize that some competitive actions may require larger or smaller Panels. The Department may determine the necessary Panel size.
- D. Panel members will not be in competition for the vacancy(s) and must be at least the same grade or higher, if possible, than the vacancy to be filed.
- E. A relative of an applicant may not serve on the Panel.
- F. Members of the Panel should be familiar with the job requirement(s) of the position(s) being filled.
- G. Consistent with a union's representational duty to ensure that competitive procedures have not been applied in an arbitrary and capricious manner, the union may request all pertinent information regarding the rating and ranking of applicants. Additionally, after review of this information, the local union will be permitted to conduct an audit of the applicable bargaining unit promotion when it has reason to believe a discrepancy exists based on the information provided by the Department.
- H. When there are more than 10 qualified promotion candidates, a panel shall be convened.
- I. The Department will provide the promotion Panel with all of the necessary information for completing its function.
- J. Panel Responsibilities – The Panel will:
  1. Apply evaluation criteria to ensure that a best-qualified candidate selected:
    - a. Evaluate each application in order to ascertain the relevancy of the candidates' background (including but not limited to work experience, awards, training, outside activities, etc.) to the KSAOs or alternative criteria that replace KSAOs. Candidates will be evaluated on the extent to which they possess the KSAOs or alternative criteria that replace KSAOs relevant to the position being filled. This assessment will be based on the applicant's description of the proportion of time spent performing relevant activities, the complexity of the activity, identifiable results, level of contacts involved in performing the work, or the scope of responsibilities

and duties performed.

- b. In making this evaluation, the task examples should not be taken as the only types of evidence, which demonstrate possession of a KSAO or alternative criteria that replace KSAOs.

2. Determining the Best Qualified List for Referral:

- a. The evaluation Panel will review the listing of ranked promotion candidates to determine whether a meaningful break is present. The meaningful break is where:
  - i. The lowest ranking candidate above the break should be able to perform the job with substantially equal success as all candidates with higher scores, and
  - ii. The highest ranking candidate below the break should not be able to perform with substantially equal success as those above the break.
- b. Promotion candidates above the break will be placed on the best-qualified list for referral. If there is no break and/or there are too many candidates above the break, the eight highest ranking candidates will constitute the best qualified list and be referred in order of their entry on duty date at the facility.
- c. In order to be referred, candidates who have to compete under the procedures of this Article and who are outside the facility shall have a rating equal to or better than the meaningful break or cutoff established by the promotion candidates within the first area of promotion consideration.
  - i. Length of service with the Department shall serve as a tie breaker where one is necessary.
  - ii. A copy of any referral list forwarded to a selecting official will be provided to the Local.

L. Multiple Grade Levels or Locations - If an announcement pertains to more than one grade level or geographic location, a separate list of eligible persons will be developed for each grade level and location.

M. Documentation – The Panel will document working notes. Notes may be annotated on worksheets used by the Panel. The notes will serve as reference material to document the process by which the decision was made.

N. Confidentiality – The results of the Panel’s actions will be treated confidentially and in accordance with provisions of the Privacy Act.

O. Decisions – The Panel will make its decision(s) by consensus.

**Section 9 - Non-Panel Referrals**

In situations where ten or fewer candidates are qualified, a promotion panel need not be conducted. However, all best-qualified candidates must be identified and referred for

selection. Recommending/selecting officials may personally or through subject matter experts (SMEs) identify best-qualified candidates through performance-based interviews, work samples/simulations, intensive review of application packages, etc., or a combination of such evaluation methods. If SMEs are used, one of the SMEs may be selected by management from a list of names submitted by the Local if one of those recommended meets the established agency criteria.

### **Section 10- Sources of Information from Candidates**

- A. Any awards the applicants have received and submitted with the application must be considered by the Panel but only to the extent they are relevant to the rating factors/job elements for the position being filled.
- B. Once applications are received and the Panel convened, no other information on a candidate may be gathered unless with the approval of the Panel.
- C. Either VA Form 4676a (or successor document), Employee Supplemental Qualifications Statement or the application submitted through USA Jobs, as applicable, will be the primary source document used to evaluate qualifications and to rate and rank candidates.
- D. Interviews – If interviews are used, they must be job-related, reasonably consistent, and fair to all candidates. Also, if interviews are used, all candidates must be interviewed if reasonably available, in person or by telephone where circumstances warrant. If more than one management official is conducting the interview, a Local representative may be present upon the employee's request.
- E. Applicants shall not suffer any disadvantage, based solely on the method of application, from using the manual application process for merit promotion, as opposed to using the additional procedures and methods that are available under USA Jobs.

### **Section 11 – Selection**

- A. In the event of unanticipated vacancy or vacancies in the same position and location as the posted vacancy occurring within 90 days of the selection, the selecting officer may make additional selections from the best-qualified candidates selected from the original vacancy announcement.
- B. When a selection has been made, the Department will arrange a release date, notify the employee, and ensure the appropriate personnel forms are processed. The effective date of a promotion action, other than promotion with a career ladder, will be the first day of the pay period in which the employee is scheduled to report. If an employee has been selected for promotion, has accepted the offer, and a reporting date has been established, and the resultant request for personnel action (SF-52) is not timely received and/or acted upon by the appointing official, the action shall be made retroactive to the reporting date.
- C. Consistent with Section 4, Career Ladder Advancement, employees selected for career ladder positions will be promoted to the next higher grade level at the beginning of the first pay period after selection, provided time in grade and any other legal promotion requirements are met.
- D. Management recognizes that it is important for maintaining high morale to try to select from

within the facility when the candidates are equally qualified to those candidates available from outside sources. Thus, Management will agree to look closely at the relative qualifications of candidates from outside and within and shall exercise good faith in the selection. However, the Parties also acknowledge that Management may make selections for appointments from among properly ranked and certified candidates for promotion, or from any other appropriate source.

- E. If the vacancy is one for which an under-representation exists and is a targeted occupation as identified in the Affirmative Employment Plan, and there are well qualified candidates whose selection would reduce the under representation, then the selection official will give serious consideration to those individuals.
- F. Upon written request, the Local will be provided with a written reason for selecting an outside candidate.

### **Section 12 – Priority Consideration**

- A. Definition - For the purpose of this article, a priority consideration is the bona fide consideration for noncompetitive selection given to an employee as the result of a previous failure to properly consider the employee for selection because of procedural, regulatory, or program violation. Ordinarily, employees will receive one priority consideration for each instance of improper consideration.
- B. Processing - The procedures for processing a priority consideration shall be:
  - 1. Employees will be notified in writing by the authorized management official of entitlement to each priority consideration. Such notice will advise employees that if a vacancy is announced and posted and the employee wishes to exercise their priority consideration, the employee should submit the necessary application to the servicing HR office with a written request that they wish priority consideration for the vacancy.
  - 2. Priority consideration is to be exercised at the option of the employee for an appropriate vacancy. An appropriate vacancy is one which the employee is interested in, is eligible for, and leads to the same grade level as the vacancy for which proper consideration was not given.
  - 3. Prior to the evaluation of other applicants, the name(s) of the employee(s) requesting to exercise priority consideration will be referred to the selecting official. The selecting official will make a determination on the request prior to evaluating other applicants.
  - 4. The fact that the employee chooses to exercise a priority consideration does not preclude that employee from also filing an application through the regular posting process.
  - 5. Union Notification – In order to assure compliance with this section the Union will be furnished statistics on priority considerations granted and exercised and the results. Statistics will be kept and provided to the Union on a quarterly basis. The Local will also be notified in writing of each individual priority consideration completed.

### **Section 13 – Priority Placement**

Employees who were downgraded without personal cause (i.e., where the downgrade was not due to misconduct, inefficiency, or at the employee's own request), may be eligible for priority placement consideration. Re-promotion may be made to a grade previously held on a non-temporary basis or to an intervening grade. This applies only when the employee was downgraded in the Department and the re-promotion is to a grade formerly held in the Department. Employees under this provision will receive priority placement consideration for each grade for which they were demoted or downgraded.

### **Section 14 – Keeping Employees Informed**

- A. Employees who apply for and inquire about a specific promotion action will be given the following information by the servicing HR office or the selecting official:
  - 1. Whether they met the minimum qualification requirements,
  - 2. Whether they were in the group from which selection was made,
  - 3. Who was selected, and,
  - 4. Upon request, the selecting official shall provide a verbal statement of the reason(s) why the employee was not selected and/or a written statement regarding what areas, if any, they should improve to increase their chances for future selection.
- B. Upon request, an employee will be shown any production records or any supervisory appraisal of past performance used in considering them for promotion. An employee is not entitled to see records of another applicant unless the employee is the selecting official, a member of the selection panel, officially involved in the promotion process, has the written consent of the subject of the record, or is a Department official with a need to review the record. However, an employee and/or the Local shall have access, consistent with law, Government-wide rule, or regulation, to all pertinent records used in the process of filling vacancies which are requested for the purpose of processing or filing a grievance, EEO complaint, or other appeal.

## **ARTICLE 27 – UPWARD MOBILITY**

### **Section 1 – Goals and Objectives**

Consistent with 5 USC 7201 and 5 CFR Part 720, the goal of Upward Mobility is to identify employees who demonstrate potential for advancement and to provide opportunities for such employees to advance their careers while meeting the Department's mission. Additionally, an objective of Upward Mobility is to support the advancement of under-represented minorities, women and persons with disabilities and to meet other special emphasis program goals. The Department's wide range of occupations will be considered in developing Upward Mobility opportunities.

### **Section 2 – Program Penetration**

- A. The extent of any facility's Upward Mobility endeavors will depend on, among other things:
  - 1. The number of lower-graded employees having the requisite potential;

2. The number and type of target positions available which would link employee potential with positions in support of the facility's operations;
  3. Available training resources;
  4. FTEE or budget constraints.
- B. Efforts will be made to create alternate ways to support Upward Mobility such as collaborative efforts with schools having different academic and vocational programs.

### **Section 3 – Identifying Positions**

Each facility will design an Upward Mobility Program, consistent with Section 2 above, that is responsive both to employee career advancement and to the facility's staffing needs. There will be joint labor/management involvement in the design of such a program. Union representatives involved with the program will be on official time, consistent with Article 6 - Official Time. As part of this program, the Parties will identify positions which may be appropriate for Upward Mobility. If the Department determines that a position should be filled as Upward Mobility, the position will be specifically described and announced as such. It will be filled at a grade level which is lower than the target level and will permit the consideration of employee potential as a factor in evaluating candidates for selection.

### **Section 4 – Creating Training Positions**

- A. It is understood that Upward Mobility may also be achieved by:
1. Evaluating situations where vacant positions can be filled at lower-grade, trainee levels;
  2. Identifying areas where bridge positions could be established in order to provide opportunities for employees to enhance their careers; and
  3. Skills upgrading to supplement the existing skills of employees so that they may fully qualify for positions in other career ladders.
- B. The consideration of positions for Upward Mobility will not be limited to any particular occupational series.
- C. The Department will review promotion announcements to ensure that the qualifications sought of applicants are necessary for successful performance in the position (e.g. not all secretarial positions require the ability to take dictation).

### **Section 5 – Employee Initiatives**

Employees are encouraged to seek guidance from their immediate supervisor(s), appropriate Administrative Office, or Human Resources Management Service if they are interested in learning about available career opportunities. These employees will be furnished information about lines of career progression, education requirements, available job opportunities, etc. Upward Mobility announcements will be well communicated throughout the facility by such means as: electronic mail, bulletin boards, newsletters, and staff meetings.

## **Section 6 – Training and Specialized Training**

- A. The Department also agrees that the Upward Mobility program can be enhanced by providing tailored guidance and training in instances where it may be beneficial to help employees adjust. These special efforts may be made consistent with the requirements of the position, the selectee's talents and aptitudes, and within available resources.
- B. The Department will support education by allowing employees to participate in employee development and career guidance programs and other similar programs, with appropriate assistance from their supervisors and other staff. Such participation should be on duty time, where applicable. All such training will be recorded in the facility education tracking system.
- C. Specialized Training is training to meet qualification standards for targeted positions (for example, training to be a technician in a specialized medical field). Any additional responsibilities assigned to an employee on a regular and recurring basis will be done in accordance with Article 20, Title 5 Classification, Article 25 - Details, Reassignments and Temporary Promotions and Article 22 - Performance Appraisal.

## **ARTICLE 28 – WITHIN-GRADE INCREASES AND PERIODIC STEP INCREASES**

### **Section 1 – Within-Grade Increases For Title 5 and Hybrid Title 38 Employees**

#### **A. Applicability**

- 1. This article (except Section 8) applies to all General Schedule, Federal Wage System, and non-appropriated fund employees in the unit of recognition. This includes Hybrid Title 38 employees appointed on a full time, part-time, or intermittent basis under 38 USC 7401(3) or 7405(a)(1)(B). It will be used in conjunction with Article 22 - Performance Appraisal. Periodic step increases for Title 38 employees are referenced in Section 8 below.
- 2. The general authority for Within-Grade Increases (WIGI) includes, but is not limited to, 5 USC 5335, 5 CFR part 531, subpart D and VA Handbook 5007.

#### **B. Definitions**

- 1. Acceptable Level of Competence - an employee is considered to have an acceptable level of competence when he or she is currently performing at least at the fully successful level or equivalent under the performance appraisal system and such performance is documented by a rating of at least fully successful/satisfactory.
- 2. Waiting Period - the minimum time requirement of creditable service to become eligible for consideration for a within-grade increase.
- 3. Within-Grade Increase - a periodic increase in an employee's rate of basic pay from one step of the grade of his or her position to the next higher step.
- 4. Equivalent Increase - an increase in an employee's rate of basic pay which is equal to or greater than the amount of one within-grade increase. An equivalent increase is based on the step rate held by the employee before their advancement to the next step

of the grade of his or her position. An equivalent increase does not include:

- a. A statutory pay adjustment;
- b. The periodic adjustment of a wage schedule;
- c. The establishment of an above-minimum entrance rate or special salary rate;
- d. A quality step increase or other incentive award;
- e. A temporary or term promotion when returned to the permanent grade or step;
- f. An increase resulting from placement of an employee in a supervisory or management position who does not satisfactorily complete the probationary period under 5 USC 3321(a)(2), and is returned to a position at the same grade and step held by the employee before such placement; or,
- g. An interim within-grade increase terminated under 5 CFR 531.414(c).

## **Section 2 – Within-Grade Increases**

- A. The determination to grant or withhold a WIGI will be based on the employee's appraisal of record and his or her current performance under a performance plan of 90 days or more.
- B. A WIGI is effective on the first day of the first pay period after an employee becomes entitled to the increase and will be processed within a reasonable period of time after the date the employee becomes eligible. To be eligible, an employee must meet the following requirements:
  1. The employee's performance must be at an acceptable level of competence;
  2. The employee must have met the required waiting period; and,
  3. The employee may not have received an equivalent increase during the waiting period.

## **Section 3 – Performance/Competence Determinations**

- A. Communication of Performance Requirements - employees shall be informed of the specific performance requirements that constitute an acceptable level of competence with the time frames and means of communication of performance standards established under the performance appraisal system.
- B. Acceptable Level of Competence Determinations - an acceptable level of competence determination shall be based on the current rating of record. The rating used as the basis for an acceptable level of competence determination must have been assigned no earlier than at the end of the most recently complete annual appraisal period. If the most recent rating is more than 90 days old, the current performance will be reviewed to ensure that the rating of record reflects current performance. When it is determined that current performance is not at an acceptable level of competence, a special rating must be prepared to document current performance.

- C. Notification - employees shall be provided with an acceptable level of competence determination as soon as possible after the completion of the required waiting period.
1. A notification of a personnel action shall be used to advise employees that they have achieved an acceptable level of competence and will receive a WIGI.
  2. When it is determined that the employee's performance is not at an acceptable level of competence, the employee shall be given a written notice which includes the following:
    - a. The reasons for the negative determination and the aspect(s) in which the employee must improve his or her performance; and,
    - b. Inform the employee of his or her right to request reconsideration of the negative determination.

#### **Section 4 – Reconsideration**

- A. Time Limits - an employee or an employee's Local representative may file a written request for reconsideration not later than 15 days after receiving the notice of negative determination. The time limit to request reconsideration should be extended when the employee shows he or she was not notified of the time limit and was not otherwise aware of it or that the employee was prevented by circumstances beyond his or her control from requesting reconsideration within the time limit.
- B. Reconsideration File - when an employee or his or her Local representative files a request for reconsideration, a reconsideration file shall be established which contains all pertinent documents relating to the negative determination, including:
1. A written negative determination and the basis thereof;
  2. The employee's written request for reconsideration;
  3. The report of investigation, when an investigation is made;
  4. The written summary or transcript of any personal presentation made; and
  5. The final decision on the request for reconsideration.
- C. Written Exception - the reconsideration file shall not contain any document that has not been made available to the employee and his or her representative. The employee will be given an opportunity to submit a written exception to any summary of the employee's personal presentation.
- D. Preparation of Response - an employee in a duty status shall be granted a reasonable amount of time to review the material used to support the negative determination and to prepare a response to the determination.
- E. Final Decision - the employee will be provided a written decision within ten workdays after receipt of the employee's response. Any negative decision will advise the employee of his or her right to grieve under the negotiated grievance procedure.

## Section 5 – Procedures for WIGI Determinations

- A. Where an employee has been assigned a present supervisor for less than 90 days and that supervisor cannot adequately assess the employee's performance, a written evaluation of the employee's performance under the prior supervisor shall be obtained before making a performance determination. A copy of this document will be given to the employee.
- B. Except in rare and unusual circumstances, the WIGI will be granted as soon as the employee is eligible unless the employee was informed in writing:
  - 1. During the most recent progress review; or,
  - 2. No later than at least 60 calendar days before the end of the statutory waiting period for eligibility for a WIGI that his or her performance is not at an acceptable level of competence and unless his or her performance improves, the WIGI will be denied.
- C. In those rare and unusual circumstances when the supervisor does not give 60 calendar days advance notice and the WIGI is delayed, the supervisor will reconsider the employee's level of competence not later than 60 calendar days after the date on which the employee completed the required waiting period. If the employee's level of competence is acceptable, the WIGI will be made retroactively effective on its original due date.
- D. If at the end of 60 calendar days, the employee's performance is not at an acceptable level of competence for the purpose of approving the WIGI, the employee will be given a written notice which will include:
  - 1. An indication that the employee's work has been reviewed;
  - 2. A statement that the employee's work has been determined to be of less than an acceptable level of competence;
  - 3. An identification of those elements, where the employee's performance has resulted in denial of the WIGI;
  - 4. A statement that the employee has a right to request, in writing, reconsideration of the negative determination provided the request is made within 15 calendar days of the employee's receipt of the negative determination;
  - 5. The name of the reconsideration official to whom an employee may submit a request;
  - 6. A statement that the employee may have a Local representative when presenting a request to the reconsideration official;
  - 7. A statement that the employee may grieve the reconsideration consistent with Article 40 - Grievance Procedure at the Step 2 Level or Step 3 Level as appropriate; and,
  - 8. An explanation that the employee may be considered for a WIGI at any time during the next 26 calendar weeks if the employee demonstrates an acceptable level of competence.

## **Section 6 – Exceptions**

- A. In accordance with OPM regulations, the employee shall be informed in writing whenever his or her acceptable level of competence determination is being delayed. The employee shall be informed of the reasons for the delay and the specific requirements for performance at an acceptable level of competence.
- B. An acceptable level of competence determination shall be waived and the WIGI granted when a Title 5 employee has not served for at least 90 days in any position under an applicable Agency appraisal system during the final 52 weeks of the waiting period for the reasons specified in 5 CFR 531.409(d).

## **Section 7 – Redetermination**

After a WIGI has been withheld, the Department may grant a WIGI at any time after it determines that the employee has demonstrated performance at an acceptable level of competence. In such cases, the WIGI will be effective the first day of the first pay period after the acceptable determination has been made.

## **Section 8 – Periodic Step Increases For Personnel Appointed Under 38 USC 7401(1) and 38 USC 7405(a)(1)(A)**

Pursuant to 38 USC 7422, compensation for employees appointed under 38 USC 7401(1) is non-negotiable. VA Handbook 5007 Part III, Chapter 5, which is not part of this Agreement and provided for information only, outlines the procedures for periodic step increases.

# **ARTICLE 29 – TEMPORARY, PROBATIONARY, PART-TIME EMPLOYEES AND JOB SHARING**

## **Section 1 – Governing Laws and Regulations**

- A. All Title 5 bargaining unit employees shall be governed by the terms of this Article to the extent consistent with applicable laws and Government-wide rules and regulations.
- B. Temporary and part-time appointments for Title 38 employees are governed by 38 USC 7405 and VA Handbook 5005, Part II, Chapter 3, Section G.
- C. Regulations relating to probationary Title 38 employees are set forth in 38 USC 7403 and 7405 VA Handbook 5005, Part II, Chapter 3, Section F, paragraph 3.

## **Section 2 – Temporary Employees**

Temporary employees may be separated at any time upon notice in writing from the Department. When it is determined that a temporary employee is to be separated, the employee will ordinarily be given two weeks' notice.

## **Section 3 – Probationary Employees**

- A. The Department agrees to provide probationary employees with the opportunity to develop and to demonstrate their proficiency.
- B. During the probationary period, frequent communication between the supervisor and employee is encouraged. In the event there are deficiencies in conduct or performance that may affect an employee's standing for conversion to career-conditional status, supervisors will generally counsel employees in a timely manner and document the meeting, with a copy given to the employee.
- C. The employee's pre-employment background will be investigated consistent with applicable regulations.
- D. Probationary employees have the right to Union representation.

## Section 4 – Part-time Employees

- A. To be considered part-time, for purposes of this section, an employee must have a regularly scheduled tour of duty, set in advance, of at least 16 hours but not more than 32 hours in an administrative workweek. In accordance with law, rules, and regulations, an increase in a part-time employee's tour of duty above 32 hours per week or 64 hours per pay period is not permitted for more than two pay periods; except for situations involving patient care needs, this restriction will also apply to Title 38 employees. When a holiday falls on a part-time employee's regularly scheduled workday, the employee will be paid for the number of hours he or she was scheduled for that day.
- B. The Department will give bona fide consideration to employee requests regarding part-time career and employment consistent with the Department's resource and mission requirements.
- C. The Department recognizes that part-time employment may be particularly appropriate for the following classes of employees:
  - 1. Employees seeking gradual transition into retirement;
  - 2. Employees with disabilities or others who require a reduced workweek;
  - 3. Employees who must balance family responsibilities with the need for additional income;  
or
  - 4. Students who must finance their own education or vocational training.
- D. Denials of requests for part-time employment from full-time employees will be discussed with the employee and, upon request, the employee will be provided with written reasons for the denial.
- E. With the exception of a reduction in force or staffing adjustment, pursuant to Article 61 - Reduction in Force/Staffing Adjustments, a full-time employee shall not be required to accept part-time employment as a condition of continued employment.
- F. If the Department proposes to convert any full-time positions to part-time, and that conversion triggers a duty to bargain under the Statute, the Department will give notice and bargain consistent with Article 13 - National Consultation Rights and Mid-Term Bargaining.
- G. An employee's request for temporary adjustment of an established part-time work schedule may be granted if based on personal need or to permit participation in management-approved details, other assignments, or training. Such adjustment shall not result in a permanent change of the established work schedule.
- H. The Department agrees to provide part-time and full-time employees on the same tour of duty equivalent access to employee activities (e.g., health facilities) and not to deny opportunities for attendance at Department-approved training courses solely because of part-time status.

- I. A permanent part-time employee receives a full year of service credit for each calendar year worked (regardless of tour of duty) for the purpose of computing service for retention, retirement, career tenure, completion of probationary period, within-grade increases, leave category rate, and time-in-grade restrictions on advancement.
- J. The Department will advise employees in writing of the effects of converting to part-time employment as it relates to employee benefits prior to the actual conversion.
- K. Employees who accept or convert to part-time positions have no guarantee that they will subsequently be converted to full-time employment, but the Department agrees to consider the employee's request based on the employee's circumstances and the needs of the Department.

### **Section 5 – Job Sharing**

- A. Job sharing is a form of part-time employment in which the schedules of two or more part-time employees are arranged to cover the duties of a single full-time position. These employees are considered to be individual part-time employees for all employment purposes. Generally, a job sharing team means two employees at the same grade level but other arrangements are possible. Employees must qualify for the position for which they are applying. Job sharers are subject to the same personnel policies as other part-time employees. Job sharing does not necessarily mean that each job sharer works half-time, or that the total numbers of hours will be 40 per week. The Department shall give bona fide consideration to employees' requests regarding part-time job sharing employment.
- B. The Department agrees that entry into job sharing is strictly voluntary, initiated by the employee, and without coercion by the Department.
- C. Potential job sharing participants shall submit a written proposal to the immediate supervisor. The job sharers are expected to seek management's assistance and approval in drawing up the job sharing plan so that the work will be properly divided. A variety of different work scheduling arrangements can be used as long as each job sharer works no less than 16 hours and no more than 32 hours each week.
- D. Those individuals currently engaged in a job sharing arrangement shall be covered under this Article.
- E. Potential participants will receive a written response from the Department within a reasonable amount of time from the date of submission of their written proposal informing them of acceptance or rejection of their job sharing proposal. If rejected, the reasons will be stated. The participants may revise their written proposal to address the reasons given for rejection and resubmit it for reconsideration.
- F. All employees who job share will have to agree to the assigned regular work schedule. However, there is no guarantee the Department will not change the schedule. If this change triggers a duty to bargain under the Statue, the Department will give notice and bargain pursuant to Article 13 - National Consultation Rights and Mid-Term Bargaining. All work schedules and tours of duty will be consistent with Article 15 - Hours of Work.
- G. Additional hours will not be assigned to employees engaged in job sharing for the sole purpose of eliminating the need to schedule qualified, full-time employees for overtime.

Such overtime hours will be assigned and accomplished according to contractual obligations.

## **ARTICLE 30 – CONSOLIDATION, INTEGRATION AND MERGER**

### **Section 1**

The Department and the Union have the right to determine their respective organizations.

### **Section 2 – Provision of Data**

A. In accordance with Article 13 - National Consultation Rights and Mid-Term Bargaining, when the Department decides to consolidate, integrate or merge any organization within the Department it will provide the Union at all appropriate levels with the necessary and supportive data (i.e. cost savings, efficiency, staffing, safety, training, etc.), in accordance with laws, regulations and contractual language as follows:

1. Article 13 - National Consultation Rights and Mid-Term Bargaining, Part A, Section 2A, requires notice and supportive documents be provided to the Union when the Union is entitled to exercise its national consultation rights.
2. Article 13 - National Consultation Rights and Mid-Term Bargaining, Part B, Section 5C, requires the Department to forward to the Union at the appropriate level, a copy of all necessary and relevant documents relied upon in proposing a change for which there is a bargaining obligation.
3. Article 13 - National Consultation Rights and Mid-Term Bargaining, Part B, Section 6 and 7, require necessary and relevant documents relied upon in proposing a change for which there is a bargaining obligation, to be provided to the Union at the intermediate and local level.
4. Article 13 - National Consultation Rights and Mid-Term Bargaining, Part B, Section 10, provides for extensions in the time limits in Article 13 - National Consultation Rights and Mid-Term Bargaining, in the event that additional information is requested by the Union.

### **Section 3 – Bargaining Obligations**

Consolidations, integrations, mergers or similar concepts are a part of reorganization. The Parties shall negotiate changes which trigger a duty to bargain under the Statute and in accordance with Article 13 - National Consultation Rights and Mid-Term Bargaining.

## **ARTICLE 31 – CONTRACTING OUT**

### **Section 1 – General**

- A. Contracting out or competitively sourcing any work performed by bargaining unit employees is an appropriate subject for discussion in labor-management forums at any level. Consistent with Article 11 - Labor-Management Cooperation, the Parties will engage in pre-

decisional activity. Notification to the Local shall normally occur at least 10 days prior to the invitation of bids or requests for proposals to contract out work.

- B. In the event that the Department decides to contract out or competitively source any work performed by bargaining unit employees, the Department will follow the law and Article 13 - National Consultation Rights and Mid-Term Bargaining.

### **Section 2 – Periodic Briefings**

Periodic briefings will be held with NAGE officials at the appropriate level to provide the Union with information concerning any Department decisions that may impact bargaining unit employees under the Federal Activities Inventory Reform Act of 1998, 31 USC 501, Office of Management and Budget Circular A-76 or other applicable laws or government-wide regulations.

### **Section 3 – Site Visits**

The Department shall provide the Local with written notification, as soon as practicable, of any site visits for potential bidders seeking contracts for work performed by unit employees. The notification will include the date, time and location of the site visit and the opportunity for a Local representative to attend such a site visit.

### **Section 4 – Employee Placement**

- A. When employees are adversely affected by a decision to contract out or competitively source, the Department shall make maximum effort to find available positions for employees. This effort shall include the following:
  - 1. Giving priority consideration for available positions within the competitive area;
  - 2. Establishing an employment priority list and a placement program; and,
  - 3. Paying reasonable costs for training and relocation that contribute to placement.
- B. The Agency may provide a list of displaced employees and their qualifications to the contractor. Employees may be provided the contractor information if they desire to be employed by the contractor.

### **Section 5 – Inventory of Commercial Activities**

The Department will maintain an inventory of all in-house commercial activities performed and will update this inventory annually. The inventory will be made available to the Local, upon request. Information on all completed cost comparisons will be made available, upon request, at the appropriate level (National or Local), where the comparisons were accomplished.

## **ARTICLE 32 – CLINICAL RESEARCH**

### **Section 1**

The parties recognize the benefits of participation in clinical research projects.

## **Section 2**

The Union will be notified prior to implementation of any clinical research that impacts working conditions of bargaining unit employees.

## **Section 3**

Participation in research projects will be voluntary, consistent with staff rights/policies and Management's right to assign work. Employees will receive training and written instructions regarding the intent and requirements of the research project prior to implementation. Participation in research projects, including surveys related to the research project, is governed by law, government-wide regulations, this Agreement and Department policy, including but not limited to VA Handbook 1058.01.

## **Section 4**

Consistent with Article 24 - Employee Awards and Recognition, staff involved in clinical research may be recognized for their participation/contribution to the project by the annual performance evaluation and other means (i.e., monetary awards, acknowledgment in papers).

# **ARTICLE 33 – RESEARCH GRANTS**

## **Section 1**

Employees who apply for research grant funding or other project applications will be notified as soon as practicable of the approval/disapproval. The notification will include the project ranking.

## **Section 2**

The Department will notify the employee in writing of the impact upon his or her employment status as a result of approval, prior to the effective date of the change in employment status.

# **ARTICLE 34 – RESEARCH PROGRAMS & DEMONSTRATION PROJECTS**

## **Section 1 – Definitions**

- A. "Research program" means a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.
- B. "Demonstration project" means a project conducted by the Office of Personnel Management or under its supervision to determine whether a specified change in personnel management policies and procedures would result in improved Federal personnel management.

## **Section 2 – Project Initiation**

- A. When a demonstration project is considered, the Union and the Department are

encouraged to jointly request demonstration authority from OPM and jointly develop the details of the demonstration project.

- B. When the Department receives notification from OPM, another Federal agency, or some other public or private organization that a research program and demonstration project will be conducted, the Department shall immediately notify the Union and the appropriate Local.
- C. The Department will not enter into any research program or demonstration project affecting unit employees without first meeting its obligation to negotiate with the Union, as appropriate.
- D. Upon request the Union shall receive:
  - 1. Information concerning research projects provided to the Department by OPM or other entities, which concern research projects affecting unit employees;
  - 2. Data and reports of research provided to the Department by OPM or other entities, concerning a research program or demonstration project affecting unit employees.
  - 3. Employees participating in any activity covered by this article will have their participation noted and placed in their eOPF.

### **Section 3 – Comments on Reports**

Whenever the Department submits an evaluation report to OPM or other entity concerning a research program or demonstration project affecting unit employees, the Union shall be provided an opportunity to submit its views in an accompanying report. After implementation of the program, the Union will be kept informed of the progress on a continuing basis, upon request.

## **ARTICLE 35 – PATIENT ABUSE**

### **Section 1**

The Parties are committed to a patient environment consistent with the highest standard of medical care, comfort, and well-being for each patient. It is a fundamental and closely guarded policy of the VA that patients are not to be mistreated, or abused in any way, physically, or verbally, by any employee.

### **Section 2**

Each facility will develop an information sheet on patient abuse that makes clear to employees the kinds of activities and boundaries which cannot be condoned. All employees will be furnished a copy of this sheet, and will sign a copy of it, which will be maintained by the facility. New employees will be provided a copy as soon as possible after entry on duty but no later than during orientation.

### **Section 3**

An annual reminder concerning the VA policy on patient abuse will be distributed to all employees.

## **ARTICLE 36 – INVESTIGATIONS**

### **Section 1 – General**

- A. An informal investigation, fact-finding or similar inquiry may be conducted by a supervisor or any Department official regardless of position and involves asking questions or requiring the employee to provide a written statement. An informal investigation, fact-finding or similar inquiry, regardless of what it is called, is an investigation pursuant to this Article.
- B. Additionally, the Department has the authority to conduct a formal investigation consistent with VA Directive and VA Handbook 0700 and Section 2 of this Article.
- C. Formal investigations under this Article do not include quality assurance documents or information protected by 38 USC 5705, such as those listed in VHA Directive 2008-077; investigations into complaints of discrimination conducted by the Office of Resolution Management pursuant to the regulations of the EEOC; investigations conducted by personnel of the Office of the Inspector General or the Office of the Medical Inspector; investigations by VA police officers conducted pursuant to VA Directive 0730 and VA Handbook 0730; or tort claims investigations conducted by, or under guidance from, the Office of the General Counsel. In the event that the Department engages in any of these processes, the Department and its employees will comply with all applicable laws, government-wide regulations and VA policies related to that process. Employees are entitled to a union representative, upon request, in the event that any of the investigations referenced in this section become a Weingarten examination as defined in section 1D below.
- D. Consistent with 5 USC 7114(a)(2)(B) (commonly known as Weingarten Rights) and Article 7 - Employee Rights, Section 3, as exclusive representative, the Local shall be given the opportunity to be present at any examination of an employee in the bargaining unit(s) by a representative of the Department, including any officials of the Inspector General's Office, 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 bargaining unit employee requests representation.
- E. Investigations or the questioning of employees will take place in a location that allows for privacy of the employee.
- F. If an employee requests union representation, the Department will cancel or delay or reschedule the meeting, in order to give the employee an opportunity to have a union representative present at the interview. The meeting may be delayed for a reasonable amount of time to allow the employee to obtain representation.
- G. If any supervisor or Department official, in advance of, or during the questioning of an employee, contemplates the likelihood of disciplinary action, the employee shall be informed

of their right to union representation prior to further questioning. If an employee in the bargaining unit requests union representation, the Department will reschedule the meeting as soon as possible, and the Local will be given the opportunity to be present to represent the employee.

- H. The right to union representation is not intended to interfere with the routine interaction between supervisors and employees in the normal course of a workday.
- I. The Department shall annually inform its employees of their right to union representation under 5 USC 7114(a)(2)(B) by posting notice of such rights on bulletin boards and through other appropriate means.
- J. When a supervisor or any other designated Department official questions an employee under this section, any information sharing between the employee's supervisor and any other Department representatives, including but not limited to, electronic mail messages, will not be distributed or shared with other employees who do not have a need to know.
- K. Employees who are required to testify outside their scheduled tour of duty will be properly compensated in accordance with law, government-wide regulations and Article 15 - Hours of Work and Article 16 - Overtime.
- L. Consistent with 38 CFR 0.735-12(b), employees will furnish information and testify freely and honestly in cases respecting employment and disciplinary matters. Refusal to testify, concealment of material facts, or willfully inaccurate testimony in connection with an investigation or hearing may be grounds for disciplinary action. An employee, however, will not be required to give testimony against himself or herself in any matter in which there is indication that he or she may be or is involved in a violation of law wherein there is a possibility of self-incrimination.
- M. If during an informal investigation, fact-finding or similar inquiry an employee is required to provide a written statement, the employee may request, and will receive, at the time it is provided to the Department Officials two copies of the statement.
- N. When evidence of possible criminal conduct is discovered during an informal investigation, the Department will coordinate with federal and state law enforcement authorities, including the VA Office of the Inspector General and VA Police, as appropriate, before an administrative investigation proceeds.
- O. If the Department appoints VA Police to conduct a non-criminal informal investigation described in section 1A above, VA Police will conduct such investigations consistent with this Article. The VA Police will inform the subject of the purpose of the investigation. In the event the VA police officer becomes aware of criminal conduct involving the employee being questioned the informal investigation will stop. If the VA police officer wishes to continue the questioning of the employee, the employee must be informed that the interview is now criminal in nature and the employee will be fully afforded all applicable legal rights regarding the criminal investigation.

## **Section 2 – Formal Investigations**

- A. The process and procedure for conducting a formal investigation, known as Administrative Investigation Boards (AIB) (also known as Administrative Board of Investigation (ABI) and

Administrative Investigations (AI)), is established under VA Directive 0700 and VA Handbook 0700 or its successor and all applicable Regulations and Law.

- B. The Department agrees that before employees conduct a formal investigation, they shall be properly trained. Consistent with VA Handbook 0700, it is the responsibility of the Convening Authority to ensure that personnel conducting a formal investigation are sufficiently trained to perform duties of a board member. Additionally, the Convening Authority must ensure that the AIB, as a whole, has sufficient expertise and capability to completely address the issues to be investigated or are otherwise able to obtain the required expertise. The charge letter will include a list of the AIB members and whom the convening authority has determined are trained.
- C. Charge Letters used in formal investigations will be drafted consistent with VA Handbook 0700. Charge Letters are used to appoint board members to the formal investigation and define the scope of the investigation for such board members, including the general matter to be investigated and any special requirements or limitations on conduct of the investigation. Specific information about charge letters, including format and amendments, can be found in VA Handbook 0700.
- D. The Department will inform the Local, in writing, in advance of a formal administrative investigation when a bargaining unit employee is the subject of, or a witness in, the investigation or inquiry.
- E. If an employee is the subject of an investigation, the employee will be informed, in writing, of the right to union representation prior to being questioned or asked to provide a statement. The employee will also be informed, in writing, of the nature of the allegation(s) by receiving two copies of the Charge Letter. Once an employee requests union representation, except in very rare and unusual circumstances, no further questioning will take place until the Union is present.
- F. Investigations should consider all facts, circumstances, and human factors. An investigation must be completed in an expeditious and timely manner. Consistent with VA Handbook 0700, it is the goal of the Department to generally complete the formal investigation report within 45 calendar days of the date the formal investigation is convened. If the AIB members are unable to complete the investigation in 45 days, they will inform the convening authority who may amend the charge letter. A copy of this amendment, if any, will be provided to the subject of the investigation and his or her designated representative at the time the convening authority amends the charge letter.
- G. Consistent with VA Handbook 0700, all employees participating in a formal investigation will be given a written notice of witness obligations, protections and Privacy Act matters prior to the start of the formal investigation.
- H. Consistent with VA Handbook 0700, witnesses providing testimony will refrain from disclosing any information developed in the course of the investigation, including the substance of their testimony. Witnesses may, however, discuss such matters with federal investigators, with the Office of the Inspector General, the Office of Special Counsel, or with their designated personal representatives. Consistent with the Whistleblower Protection Act or other applicable laws, witnesses will not be reprimed against for any protected disclosures.

- I. Once the formal investigation is certified as complete, the Department will provide written notice to the subject of the formal investigation and any employees who gave testimony that the investigation is complete. If the Department initiates no action as a result of this investigation, the employee, who was the subject, will receive the written findings in a timely manner.
- J. The statement of employee rights and obligations will be consistently applied throughout the NAGE bargaining unit. That statement will be consistent with this Agreement and include the following:
  - 1. The employee's right to representation by NAGE;
  - 2. The right of an employee to a copy of his or her testimony and an additional copy that the employee may provide to his or her representative; and
  - 3. The right of employees not to incriminate themselves (answering questions that may be used against them in a subsequent criminal case).
- K. When an employee has requested union representation in an investigative proceeding, the union representative may fully and actively represent the employee and is not limited to the role of an observer.
- L. The parties strongly recommend that local facilities use a court reporter rather than a recording device when taking testimony during a formal investigation. In the event the recording of witness testimony occurs, it will be conducted in accordance with VA Handbook 0700. Recorded witness testimony will be transcribed and copies provided to both the Department and the witness. It is recommended that the Department utilize a system to make multiple recordings to ensure accuracy of transcription and to provide an expedient copy of the taped testimony of the witness when requested. Upon the request of the witness or his/her representative, a copy of the recording will be made available after the witness has reviewed the transcript (either initial or final). In the interim period between the transcription of the tape recording and receipt of a hard copy of the transcript, the employee and his or her designated representative may request the ability to listen and review their individual testimony.
- M. Consistent with section (e)(5) of the Privacy Act (5 USC 552a(e)(5) and 5 USC 7114(b)), when an action has been proposed against an employee, the employee, or their representative may request a copy of the complete AIB investigation file. More specifically, this includes, but is not limited to, copies of written statements, tapes, testimony/transcripts, exhibits, recommendations and/or findings, and photographs in the AIB investigation file. The Department will provide a written explanation of any denial of information requested, normally within 30 days of receipt of the request.
- N. The participation of bargaining unit employees on a formal investigation as a board member will be with the consultation of the Local.
- O. If Department details an employee who is the subject of an investigation, Department will, when practicable, detail the employee to an assignment which will not result in the loss of any benefits, pay or differentials.

### **Section 3 – Administrative Investigation Training**

Union sponsored training on the AIB process is an appropriate use of official time consistent with Article 6 - Official Time.

## **ARTICLE 37 – DISCIPLINE AND ADVERSE ACTIONS**

### **Section 1 – General**

- A. It shall be the policy of the Department to effect disciplinary, adverse and major adverse action only for just cause as will promote the efficiency of the service. Disciplinary and adverse actions shall be consistent with the punishable act, the degree of the severity of the act, the employment record of the employee, and the principle of consistency of discipline, so as to promote the efficiency of the Department (meaning the use of like penalties for like offenses).
- B. Disciplinary and major adverse actions taken against Title 38 employees based on professional conduct or competence, as determined by the Secretary or designee, are outside the scope of bargaining pursuant to 38 USC 7422 and are not governed by this Article.
- C. Disciplinary procedures, not covered by applicable laws, rules, regulations or this Agreement, can be found in VA Handbook 5021.

### **Section 2 – Definitions**

For purposes of this Article, the following definitions are used:

- A. For Title 5, Title 38 7401(3) Hybrid and Veterans Canteen Service employees:
  - 1. A disciplinary action is defined as an admonishment, reprimand, or suspension of 14 calendar days or less; and
  - 2. Adverse actions are removals, suspensions (including indefinite suspensions) of more than 14 calendar days, reduction in pay or grade or furloughs of 30 calendar days or less.
- B. For Title 38 employees:
  - 1. A disciplinary action is defined as an admonishment or reprimand taken against an employee for misconduct or deficiency in performance.
  - 2. A major adverse action is a suspension (including indefinite suspensions), transfer, reduction in grade, reduction in basic pay or discharge based on conduct or performance.

### **Section 3 – Removal of Disciplinary Actions**

- A. Records which meet the requirements for officially approved system of records, consistent with 5 CFR Part 293 – Personnel Records, maintained by department officials must conform to the approved requirements for those records.

- B. Letters of Admonishment will be removed from the personnel folder after a one year period. Upon the employee's request, an admonishment may be removed after six months if, in the opinion of the supervisor, the letter of admonishment has served its purpose.
- C. Letters of Reprimand will be removed from the personnel folder after a two year period unless additional occurrences have occurred and then they may be maintained for three years.

#### **Section 4 – Alternative and Progressive Discipline**

- A. Progressive discipline means using the least severe action which, in the Department's judgment, will correct the employee's misconduct. Progressive discipline does not preclude the exercise of discretion by the Department in determining appropriate action. The Department will apply progressive discipline when it determines that progressive discipline will correct the misconduct.
- B. The Department and the Union support the use of alternative approaches to traditional disciplinary actions in certain circumstances. However, alternative discipline will be used only when agreed upon as appropriate by the Department and the employee. If the employee is represented by the Union, the Union must sign off on all alternative discipline. If the employee is not represented by the Union any alternative discipline must comply with the terms and conditions of this Agreement.
- C. Alternative discipline is defined as any form of action taken to correct behavior other than the traditional disciplinary methods. Alternative discipline provides the opportunity to address employee misconduct in a more positive manner by offering employees options to traditional discipline; examples, include but are not limited to, unpaid off-duty community service, a paper suspension or donation of annual leave to a leave transfer recipient.
- D. An employee, or his/her union representative, may suggest alternative discipline to the deciding official during his or her oral and written response as full settlement of the pending action.

#### **Section 5 – Timeliness of Investigation**

- A. Consistent with 5 USC 7106(a)(2)(A), the Department:
  - 1. Will investigate an incident or situation as soon as possible to determine whether or not discipline is warranted; and,
  - 2. Will initiate discipline, if any, within a reasonable amount of time after completion of the investigation.
- B. An employee may have a right to union representation, consistent with Article 7 - Employee Rights and Article 36 - Investigations.
- C. A reasonable effort will be made to reconcile conflicting statements by developing additional evidence. In all cases, the information obtained will be documented.

- D. It may be necessary for the Department to remove an employee from the worksite during the pendency of discipline. In those instances where it is determined that the employee's continued presence at work might pose a threat to employees, patients or the public, result in loss of or damage to VA property, or otherwise jeopardize legitimate Department interests, reassigning the employee must be considered. This includes, but is not limited to, reassignment or detailing the employee to other duties to eliminate concerns arising out of the proposed action. In such instances:
1. The Department will take into consideration the impact of the resulting assignment to the employee as well as the relationship between the temporary assignment and their previous work assignment.
  2. When the Department details or reassigns an employee who is the subject of an investigation, the Department when practicable will detail or reassign the employee to an assignment which will not result in the loss of any benefits, pay or differentials.
- E. The Department will take into consideration the impact of the resulting assignment to the employee as well as the relationship between the temporary assignment and their previous work assignment.
- F. If the Department initiates a formal investigation regarding discipline, it will do so consistent with Article 36 - Investigations, Section 3, Formal Investigations.

### **Section 6 – Processing Admonishments and Reprimands**

- A. An employee against whom an admonishment or reprimand is proposed is entitled to 14 calendar days advance written notice, unless the crime provisions are invoked. The notice will state the specific reasons for the proposed action. The Department agrees that the employee shall be given up to eight hours on duty time to review the evidence on which the notice of disciplinary action is based and that is being relied on to support the proposed action. Additional time may be granted on a case-by-case basis. Upon request, one copy of any document(s) in the evidence file will be provided to the employee and their designated representative.
- B. The employee or their representative may respond orally and/or in writing as soon as practical but no later than ten calendar days from receipt of the proposed disciplinary action notice. The response may include written statements of persons having relevant information and/or appropriate evidence. Extensions for replying to proposed disciplinary actions may be granted for good cause.
- C. The Department official will issue a written decision at the earliest practicable date. The written decision shall include the reason for the disciplinary action and a statement of findings and conclusions as to each charge. For Title 38 employees the decision shall also include a statement as to whether any sustained charges arose out of "professional conduct or competence" and a statement of the employee's appeal rights.
- D. If an employee has a right to a representative in responding to a proposed disciplinary action such right will be granted consistent with Article 7 - Employee Rights and Article 36 - Investigations.

### **Section 7 – Processing Suspensions, Adverse Actions, and Major Adverse Actions**

- A. An employee against whom a suspension, adverse action, or major adverse action is proposed is entitled to 30 calendar days advance written notice, except when the crime provision has been invoked. The notice will state specific reasons for the proposed action. The employee shall be given the opportunity to use up to eight hours of duty time to review the evidence on which the notice is based and that is being relied on to support the proposed action. Additional time may be granted on a case-by-case basis.
- B. Upon request, one copy of any document(s) in the evidence file will be provided to the employee and their designated representative.
- C. The employee and/or representative may respond orally and/or in writing as soon as practical but no later than 14 calendar days from receipt of the proposed action notice. The response may include written statements of the persons having relevant information and/or other appropriate evidence. Extensions for replying to proposed adverse actions and suspensions may be granted when good cause is shown. The Department has the right to restrict the response time to seven calendar days when invoking the crime provision.
- D. The Department official will issue a written decision at the earliest practicable date. The written decision shall include the reason for the disciplinary action and a statement of findings and conclusions for each charge. For Title 38 employees, the decision shall also include a statement as to whether any sustained charges arose out of “professional conduct or competence”, and a statement of the employee’s appeal rights.
- E. If an employee has a right to a representative in responding to a proposed adverse or major adverse action such right will be granted consistent with Article 7 - Employee Rights and Article 36 - Investigations.
- F. These provisions do not apply to probationary or trial employees.
- G. Adverse action notices must be in writing and be consistent with applicable law, regulation and policy.

### **Section 8 – Notice of Final Disciplinary or Adverse Actions**

- A. Notice of a final decision to take disciplinary or adverse action shall be in writing and shall inform the employee of appeal and grievance rights and their right to representation. The employee will be given two copies of the notice; one copy may be furnished to the Local by the employee. The Department will inform the Local, in writing, when it takes a disciplinary or adverse action against a unit employee.
- B. Notice shall explain in detail the reasons for the action taken and all evidence relied upon to support the decision. The notice will also advise the employee how long the action will be maintained in his or her file. The supervisor shall discuss the notice with the employee. If the employee elects to have a Local representative present, the discussion will be delayed until the Local has an opportunity to furnish a representative.

### **Section 9 – Supervisory Notes**

- A. Supervisory notes are the supervisor’s personal notes that may be kept as a reminder in

carrying out their supervisory responsibilities.

- B. If a supervisor makes a personal decision to keep notes on an employee, the notes:
  - 1. Must be absolutely uncirculated, they cannot be reviewed by anyone else (including secretaries, other supervisors, or Department official(s)); and,
  - 2. Must be maintained in secure fashion in order to prevent unauthorized disclosure, in accordance with 5 CFR 293.
- C. Supervisory notes may only be used to support any action detrimental to an employee if such notes have been shown to the employee at the earliest available time after the entry was made and a copy provided to the employee. If a supervisor gives a copy of the note to the employee more than 7 calendar days after the note was created, the supervisor must provide a written explanation why there was a delay in providing the note. In any event, supervisory notes may be retained for six months, unless used in a personnel action. Once an employee has received a copy of the supervisory notes, the notes can be provided to an appropriate Department official with a legitimate need to know for the performance of their duties.

## **ARTICLE 38 – OFFICIAL RECORDS**

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

This Article refers to any records that meet the definition of a Privacy Act system of records in accordance with 5 USC 552a. The term “system of records” means a group of any records under the control of the Department from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual whether in paper or electronic format. Such records include the electronic official personnel folder (eOPF) and any other records which meet this definition.

All official records subject to this Article will be collected, maintained, retained and accessed in accordance with applicable law and government-wide regulations, including the Federal Records Act, the Privacy Act and the Health Insurance Portability and Accountability Act (HIPAA), this Agreement and applicable VA policy. All official records are confidential and shall be known or viewed by officials only with a legitimate need to know for the performance of their duties and must be retained in a secure location. Employees shall be advised during new employee orientation of the nature and purpose of their eOPF and how to access it.

For the purposes of this Article, a designated representative is a representative designated by the employee in writing to access and review the specific information identified in the designation. Such designation must comply with all laws, government-wide regulations and VA policy.

### **Section 2 – Access to Records**

During normal duty hours, upon request, employees and their representative(s), designated in writing, shall have the right to examine records personally identified to the employee including those maintained in a Privacy Act system of records. The Department shall excuse the employee from duty status for a reasonable period of time during such review. An employee's

union representative's examination of such records in connection with a representational function is a proper use of official time consistent with Article 6 - Official Time. Pursuant to 5 USC 7114 (b)(4), employees or their union representative(s), designated in writing, may receive at no cost copies of personally identified records, which have not been previously furnished during the duration of this Agreement. Additional copies will be provided; however, there may be a charge in accordance with the Department fee schedules in effect at the time of request. Requests made under the Freedom of Information Act may require the requestor to pay for the records requested.

- A. Upon request, individuals have the right to an accounting of properly requested and released disclosures of their individually identifiable information.
- B. The employee shall have the right to prepare and enter a concise statement of disagreement concerning his or her records as authorized by applicable regulations. Doing so, however, does not negate or waive the employee's right to grieve any matter, consistent with Article 40 - Grievance Procedure, or take other appropriate action.
- C. Upon request, the Department will provide computer access to review an employee's eOPF in a location to afford a reasonable amount of privacy to review such records.
- D. Upon request, the Department will work with an employee and his or her representative, designated in writing, to explain the records control schedule and, if necessary, assist the employee in reviewing his or her eOPF.
- E. Access to personnel records of the employee by the employee or the representative designated in writing will be granted when requested if such records are maintained on the facility where the employee is located. If the records are not so maintained, the Department will initiate action to obtain the records from the location within three working days of the request and make them available to the employee or designated representative. The employee, or their union representative, may request that any applicable timeframes for a related action may be extended or held in abeyance.
- F. Each bargaining unit employee or his or her properly designated representative is entitled to review the employee's medical records. When a request for access involves medical or psychological records that the Systems Administrator, or designee, believes requires special handling, the requester should be advised that the material will be provided only to an authorized healthcare provider designated by the employee. Upon receipt of the designation and upon verification of such provider, the records will be made available to the provider, who will have full authority to disclose those records to the employee, when appropriate. The Department will provide the Local the name of the Department official, such as the Systems Administrator, or designee on an annual basis and upon change of designee.

### **Section 3 – Outdated Records**

- A. All personnel records shall be purged and information disposed of in accordance with the appropriate records control schedule, as governed by the law and regulations.
- B. During new employee orientation the Department will explain to employees how to access their eOPF, the process the Department uses for adding and removing documents from the

eOPF and generally explain the records control schedule regarding documents in an employee's eOPF.

- C. The Department will notify an employee when it places a record in his or her eOPF.
- D. Upon request, the Department will work with an employee and his or her representative, designated in writing, to explain the records control schedule and, if necessary, assist the employee in reviewing his or her eOPF to ensure the accuracy of his or her eOPF, including the purging of any outdated records.
  - 1. The Department will maintain a system of follow-up to assure that any written counseling, disciplinary, or similar action with a time limit on it is removed on the proper date.
  - 2. If any outdated or unauthorized material is accidentally left in a file, it may not be used to support any personnel action detrimental to the employee.

#### **Section 4 – Uses and Misuses of Employees Social Security Numbers and Identification**

- A. The Department shall maintain the confidentiality of the employee's social security number in accordance with all applicable legal requirements.
- B. Lists or documents requiring the use of the social security number or complete birth date will be kept confidential and disclosed only on a job-related need-to-know basis or as required by law.
- C. Employees will not be identified by their full or partial social security number on any publicly available lists, including but not limited to educational offering sign-in sheets.
- D. Consistent with law and government-wide regulations including but not limited to the Privacy Act and HIPAA, and when properly requested, social security numbers and other personally-identifiable information that are displayed on official records must be removed or concealed, prior to release unless the release is to that specific requesting individual.
- E. Should an employee have any problems related to identity theft resulting from VA records, the Department will cooperate with any related investigation and prosecution. The Department will notify the Local and the effected employee as soon as they become aware of the identity theft resulting from VA records.

### **ARTICLE 39 – ALTERNATIVE DISPUTE RESOLUTION**

#### **Section 1 – General**

The Department and NAGE support the concept of the use of Alternative Dispute Resolution (ADR) problem-solving methods to foster a good labor-management relationship. Union and Management at all levels should support the use of ADR problem-solving methods as an alternative to resolve disputed matters. Those involved in the development and use of an ADR system shall be trained in the principles and methods of ADR.

#### **Section 2 – Definitions and Intentions**

- A. ADR is an informal, voluntary process, which seeks early resolution of employee, union, and management disputes.
- B. Any ADR process must be jointly designed by the Union and the Department. ADR should be effective, timely, and efficient. It should focus on conflict resolution and problem solving and foster a cooperative labor and management relationship. Participation of all parties in the ADR process must be voluntary.
- C. ADR shall be a process available to labor-management forums (Partnerships).
- D. The Parties agree to ongoing evaluation to improve the process.

### **Section 3 – Rights and Responsibility**

- A. The Parties agree to follow all applicable laws, including the Administrative Dispute Resolution Act (ADRA), government-wide regulations and VA policies, including VA Directive 5978, regarding the ADR process.
- B. The Parties have the responsibility of informing employees and the Department officials of the ADR option to resolve disputes. Additionally, the Parties recognize the importance of providing accurate and thorough information on the ADR process when requested by employees. To this end, either the Department or the Union will:
  - 1. Respond to questions about the ADR process;
  - 2. Provide information to employees on the ADR process including its use in workplace matters and potential EEO complaints consistent with 29 CFR 1614.102(b)(2); and
  - 3. Help employees complete the designated ADR form.
- C. Consistent with VA Directive 5978, the use of ADR to solve disputes is subject to the mutual consent of the Department and the Union for employees in the bargaining unit.
- D. The Parties agree to encourage the use of ADR except for the most egregious or frivolous matters. ADR should be undertaken in good faith and not circumscribed by formal rules and regulations.
- E. Consistent with law, including 5 USC 574 (ADRA) and 5 USC 552a (Privacy Act), and VA Directive 5978, ADR proceedings are a confidential process. As such, the details should not be shared with anyone without a need to know.
- F. The Department and Union representatives participating in the ADR proceedings shall have the authority to approve or enter into a settlement agreement. Assurance of enforceability of any agreement between the Parties will be in writing and the final written agreement will include the signatures of the participants along with the appropriate Department official and appropriate Union official.
- G. ADR resolutions shall not be precedential unless agreed to by the Parties. Resolutions under ADR cannot conflict with or supersede collective bargaining agreements between the Parties.

- H. Once an employee elects to use an ADR process, the Union has a right to participate in that process while serving as the employee's representative or on behalf of the Union as applicable.
- I. The Parties agree that the ADR process is most effective with a trained neutral certified in accordance with VA Handbook 5978.2, to assist the Parties in reaching a mutually acceptable solution. Since ADR is a voluntary process, the Parties may make suggestions or concerns regarding the selection of mediators. Additionally, during the ADR process, if either party has a concern regarding neutrality of the mediator, they may request a different mediator or a mediator from a different location or decline further participation in the ADR process.

#### **Section 4 – Implementation**

- A. The Department recognizes that the Union is a vital component to development, implementation and assessment of an overall effective VA ADR Program and is encouraged to participate in this endeavor. All local ADR programs shall be jointly designed and implemented in good faith with the Union and include the use of mutually agreed upon neutral third parties. In the event the Parties are unable to jointly design and implement an ADR program, the Parties may utilize traditional bargaining in accordance with Article 13 - National Consultation Rights and Mid-term Bargaining.
- B. ADR agreements must state the objectives of all Parties as well as a commitment from all Parties to resolve their disputes in a non-adversarial environment.
- C. The Parties at all levels may jointly adopt an ADR problem-solving method that will include mutually agreed upon third Parties. ADR methods may include, but are not limited to, early neutral evaluation mediation, interest-based problem solving, peer review, conciliation, facilitation, and neutral fact-finding.
- D. ADR methods may be used prior to or during a grievance/arbitration or statutory appeal. In the use of ADR processes, contractual time frames will be stayed by mutual agreement. Statutory time frames cannot be stayed.
- E. ADR data that is collected nationally or at the intermediate level, for the use of the VA ADR Steering Committee will be provided to the Union member of that committee.
- F. The ADR coordinator or appropriate official will notify the union/local in writing when bargaining unit employees elect to participate in the ADR process.

#### **Section 5 – Training**

- A. The Department will inform employees at new employee orientation the availability and use of the ADR program as well as available training on ADR in accordance with Article 23 - Training and Career Development.
- B. The ADR coordinator at each facility will provide and post information that explains how to apply for the opportunity to be a VA certified neutral and to recertify. The Local may provide to the ADR coordinator with the names of employees interested in becoming a VA certified

neutral. When a request is denied the employee and the Local will be provided, with a written explanation of the denial.

## **ARTICLE 40 – GRIEVANCE PROCEDURE**

### **Section 1 – Definition**

A grievance under 5 USC 7103(a)(9) means any complaint:

- A. By an employee concerning any matter relating to the employment of the employee;
- B. By the Union concerning any matter relating to employment of an employee; or,
- C. By any employee, the Union or the Department concerning:
  - 1. The effect or interpretation, or a claim of breach of this Agreement; or,
  - 2. Any claimed violation, misinterpretation or misapplication of any law, rule, or regulation affecting conditions of employment.

### **Section 2 – Purpose**

- A. Except as otherwise provided in Section 2B below, this negotiated grievance procedure shall be the sole procedure available to the Union, the Department and the unit employees for resolving grievances over the interpretation or application of this Agreement, its amendments, supplements or for unit employees over any dissatisfaction with their working conditions.
- B. If a Title 38 employee receives a disciplinary or adverse action that does not involve or include a question of professional conduct or competence, the employee may appeal the action under the negotiated grievance procedure outlined in this Article or under the Department's grievance procedure in VA Handbook 5021, Part IV, Chapter 3, but not both. The employee will elect which grievance procedure will be used and whichever is elected first will be used.

### **Section 3 – Exclusions**

- A. This Article shall not govern a grievance concerning:
  - 1. Any claimed violation relating to prohibited political activities (Subchapter III of Chapter 73 of Title 5); and 5 USC 7121(c);
  - 2. Retirement, life insurance, or health insurance;
  - 3. A suspension or removal in the interest of national security under Section 7532 of Title 5;
  - 4. Any examination, certification or appointment;

5. The classification of any position which does not result in the reduction in grade or pay of an employee;
6. The separation of an employee during his or her probationary period;
7. Non-selection for promotion from a group of properly certified candidates;
8. Proposed disciplinary/adverse actions;
9. Matters appealable to the Merit System Protection Board;
10. EEO Complaints;
11. Termination of temporary appointments - a temporary appointment is a non-permanent appointment with a pre-determined time limit. This includes appointments of one year or less, term appointments of more than one year but not more than four years, and excepted appointments of one to three years; and,
12. Grievances over appointments or advancements for Title 38 hybrid employees appointed under the authority of 38 USC 7401(3) or 38 USC 7405(a)(1)(B), except to the extent that such grievances assert only that the Department failed to follow its own promotion procedures. (Such grievances may only be filed following the promotion reconsideration procedures set forth in VA Directive/ Handbook 5005).

B. Under Title 38 Section 7422, the following additional exclusions apply:

1. Any matter or question concerning or arising out of professional conduct or competence such as direct patient care or clinical competence;
2. Any matter or question concerning or arising out of peer review; and,
3. Any matter or question concerning or arising out of the establishment, determination, or adjustment of employee compensation under Title 38.

C. The language in Paragraph B in this Section shall only serve to preclude a grievance where the Secretary, or a lawfully appointed designee of the Secretary determines in accordance with 38 USC 7422 that the grievance concerns or arises out of one or more of the three items listed above. Any determination under this language by the Secretary or his or her designee is subject only to judicial review pursuant to 38 USC 7422(e).

#### **Section 4 – Other Applicable Procedures**

A. As provided for in 5 USC 7121, the following actions may be filed either under the statutory procedure or the negotiated grievance procedure but not both:

1. Actions based on unsatisfactory performance (5 USC 4303);
2. Adverse actions (5 USC 7512); and,
3. Discrimination (5 USC 2302(b)(1)).

- B. Nothing in this Agreement shall constitute a waiver of any further appeal or review rights permissible under Title 5, Chapter 71.
- C. An employee shall be deemed to have exercised his or her option under this Section when he or she timely initiates an action under the applicable statutory procedure or files a timely grievance in writing under the negotiated grievance procedure, whichever event occurs first. Discussions between an employee and an EEO (ORM) counselor would not preclude an employee from opting to select the negotiated grievance procedure if the grievance is otherwise timely. Extensions of time will be granted consistent with Section 6 - Extensions.

### **Section 5 – Alternative Dispute Resolution**

The Parties may use alternative dispute resolution to settle grievances in accordance with Article 39 - Alternative Dispute Resolution.

### **Section 6 – Extensions**

Time limits at any step of the grievance procedure may be extended by mutual agreement in writing.

### **Section 7 – Informal Resolution**

- A. Most grievances arise from misunderstanding or disputes which can be settled promptly and satisfactorily on an informal basis. Employees and/or their Union representatives are encouraged to informally discuss issues of concern with their supervisors at any time.
- B. Reasonable time during work hours will be allowed for employees and Union representatives to discuss, prepare for, and present grievances, including attendance at meetings with the Department officials concerning the grievance. Union representatives will on official time consistent with Article 6 - Official Time.
- C. Employees and/or their Union representatives may request to talk to other appropriate officials about items of concern without filing a grievance under this Article if they choose.
- D. If an employee and/or his or her Union representative believe that the informal discussions will not provide the resolution sought, they may inform the supervisor that a grievance under this Article may be filed.
- E. The contractual timeframes in this Article for filing a grievance are not altered by any informal discussions for resolution, unless extensions are mutually agreed to in writing by the Parties.

### **Section 8 – Grievance Procedure**

- A. In the event of a formal filing of a grievance, the following steps will be followed:

**Step 1** - An employee and/or the Local shall present the grievance to the immediate or acting supervisor in writing within 30 calendar days of the date from the date of the act or occurrence, or the employee's awareness thereof or at any time if the act or occurrence is of a continuing nature. The immediate or acting supervisor will make every effort to resolve the

grievance immediately, but must meet with the employee and the Union representative and provide a written answer within 14 calendar days of receipt of the grievance. If the Service Chief or equivalent is the immediate supervisor, the Step 2 grievance will be submitted, if unresolved, to the next higher management official below the Director or equivalent.

**Step 2** - If the grievance is not satisfactorily resolved at Step 1, it shall be presented to the Service/Division Chief, or equivalent management official or designee, in writing, within seven calendar days of receipt of the Step 1 supervisor's decision. The Service/Division Chief, or equivalent Department official, or designee, shall meet with the employee and his or her representative and provide a written answer within seven calendar days.

**Step 3** - If no mutually satisfactory settlement is reached as a result of the second step, the aggrieved Party or the Local shall submit the grievance to the Director or equivalent, or designee, in writing, within seven calendar days of receipt of the decision of Step 2. The Director or equivalent, or designee, will meet with the aggrieved employee and his or her representative within 10 calendar days to discuss the grievance. The Director or equivalent, or designee, will render a written decision to the aggrieved Party and the Local within 10 calendar days after the meeting. If the grievance is not satisfactorily resolved in Step 3, the grievance may be referred to arbitration as provide in Article 41 - Arbitration.

- B. The Union is entitled to have an equal number of representatives at all steps of the grievance procedure as the Department.
- C. Any grievance must state the basis for the grievance, including the specific contract provision and any known policy, handbook, directive or law, etc., allegedly violated as well as the corrective action desired.
- D. Other VA Divisions:
  - 1. For bargaining unit employees working at other non-VHA divisions in the Department, which may include but are not limited to Veterans Canteen Service (VSC), National Cemetery Administration (NCA), Acquisition Material Department, Centralize Patient Account Center (CPAC), Consolidated Mail Outpatient Pharmacy (CMOP), Office of Information & Technology (OI&T), and Consolidated Business Office (CBO); within 30 days of the signing of this Agreement the Department will provide the Local copies of the organizational charts, with names, titles, and contact information of the applicable Department official with whom the grievance will be filed.
  - 2. The Department will also provide to the Local updates and changes to organizational charts as they occur.
- E. In the event of a formal filing of a grievance, the following steps will be followed for other VA divisions: the timelines for each step will be as specified above.

Step 1 grievances will be presented to the immediate supervisor, where he or she is below the Service/ Division Chief level, if applicable. If there is no Step 1 supervisor, the grievant will proceed to the Step 2 grievance process.

Step 2 grievances will be presented to the Service/Division Chief, or equivalent Department official or designee, if applicable. If there is no Step 2 Service/Division Chief the grievant will proceed to the Step 3 grievance process.

Step 3 grievances will be presented to the Director or equivalent Department official or designee.

F. Filing at Various Steps

1. It is agreed that grievances should normally be resolved at the lowest level possible. However, there will be times when a grievance may be more appropriately initiated at the second or third step of the grievance procedure.
2. Filing at such steps is appropriate, for example, when a disciplinary action is taken by a Service Chief or higher level, when the supervisor at the lower level clearly has no authority to resolve the issue or when the Union grieves an action of a Department official other than a Step 1 supervisor.
3. When a grievance is initiated at a higher step, the time limits of Step 1 will apply. The appropriate Department official or designee (secretary, administrative assistant, etc.) shall acknowledge in writing receipt of all grievances.

G. At any step of the negotiated grievance procedure, when any Department deciding official designates someone to act on his or her behalf, that designee will have the complete authority to render a decision at that step and will render the decision.

H. An employee and or the Union may terminate a grievance, in writing, at any time.

I. If an employee resigns, dies, or is separated by an action other than removal before a decision is reached on a grievance being processed and no compensation issue is involved, the action may be stopped by the Department after the Local has been informed in writing. If the previously, timely filed grievance involves compensation, the grievance may continue at the election of the grievant's representative or the Union representative, as applicable.

**Section 9 – Failure to Respond in a Timely Manner**

- A. Should the Department fail to comply with the time limits in the steps of the grievance procedure, the Union has the right to immediately advance the grievance to the next step, including arbitration.
- B. If the deadline for any action in this Article falls on a Saturday, Sunday, or federal holiday, the deadline will be extended to the next workday.

**Section 10 – Jurisdiction**

- A. Grievance/Arbitrability issues will be resolved as the threshold issues of arbitration.
- B. When the Secretary, or designee, has determined an issue to be exempt from the grievance procedure under 38 USC 7422, an arbitrator has no jurisdiction over that issue.

**Section 11 – Representation**

Bargaining unit employees may present a grievance, with or without representation at the grievant's discretion. The Union has the right to be present during any meeting where the

grievant is present which discusses the grievance or settlement. The Department shall provide the Union with written notice and a copy of the grievance as soon as possible after a grievance is filed, and shall agree to include the Union in the scheduling of each meeting between the grievant and the Department official. A written copy of the grievance decision will be provided to the Union. The right to individual representation does not include the right to take the matter to arbitration, unless the Union agrees to do so.

### **Section 12 – Local Grievances**

Grievances initiated by the Local shall be filed with the Director, equivalent Department official or designee within 30 calendar days from the date of the act or occurrence, or the Local's awareness thereof. The written grievance will identify the matter grieved and the relief sought. The written grievance will be consistent with the requirements in Section 8 above. The Director, equivalent Department official or designee will meet with the Local President or designee within 10 calendar days to discuss the grievance. The Director or equivalent Department official or designee will render a written decision to the Local within 30 calendar days after the meeting.

### **Section 13 – Department Grievances**

Department initiated grievances shall be filed with the Local President or designee and shall constitute Step 3 of the negotiated grievance procedure. Such grievances must be filed within 30 calendar days of the act or occurrence, or when the Department became aware of the act or occurrence. The written grievance will be consistent with the requirements in Section 8C above. The Local President or designee will meet with Department within 10 calendar days to discuss the grievance. The Local President or designee will render a written decision to Department within 30 calendar days after the meeting.

### **Section 14 – National Level Grievances**

- A. A grievance affecting more than one Local may be brought by the NAGE National office or VA Headquarters. A national grievance may also be filed in cases where the Department at a single facility does not have the authority to resolve the issue. The grievance will be filed with the respective designated representative as follows:
  - 1. Within 45 calendar days of the acts or occurrence, or the Party's awareness thereof, or at any time, if the act or occurrence is continuing, the aggrieved Party may file a written grievance.
  - 2. The written grievance will contain the same information identified in Section 8C above.
- B. Upon receipt of a grievance, the Parties will communicate with each other in an attempt to resolve the grievance. A final written decision, including any position on grievability or arbitrability must be rendered within 45 calendar days of receipt. If a decision is not issued within such time limit or if the grieving Party is dissatisfied with the decision, the grieving Party may proceed to arbitration in accordance with this Agreement. Unless otherwise agreed to by the Parties, arbitration hearings will be held in VA Central Office.
- C. The Department agrees to pay travel and per diem expenses for up to three employee witnesses to provide testimony in connection with the arbitration proceeding, and the Union employee representative presenting the grievance/arbitration. Travel and per diem for

additional witnesses will be by mutual agreement of the Parties. The Parties also agree to explore the use of audio and video conferencing to save costs.

### **Section 15 – Multiple Grievances**

Multiple grievances over the same issue may be initiated as either a group grievance or as separate grievances at any time during the time limits of Step 1. Grievances may be combined and decided as a single grievance at the later steps of the grievance. When identical grievances are combined, the Department's decision is binding in all cases.

### **Section 16 – Review of Information**

Upon the filing of a grievance, the employee and his or her Union representative shall be allowed to review any and all documentation, allowable by law and regulation, considered to support the grieved action. This should be provided at the earliest possible time after requested. Upon request, an employee or and his or her representative will be provided a copy of any such material.

## **ARTICLE 41 – ARBITRATION**

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

If the Parties fail to satisfactorily resolve a grievance, only the Union/Local or the Department may refer to arbitration any grievance that remains unresolved after the final step under the procedures of Article 40 - Grievance Procedure. A notice to invoke arbitration shall be made in writing to the opposite party within 30 calendar days after receipt of the written decision rendered in the final step of the grievance procedure. If neither party invokes arbitration within the 30 calendar day time period, the Parties will accept the grievance as resolved with no further rights to advancement to Arbitration. The Parties may, however, extend the time limitation by mutual agreement.

### **Section 2 – Arbitrator Selection**

- A. The Parties should jointly request a list of seven impartial arbitrators from the Federal Mediation and Conciliation Service (FMCS) within ten calendar days from the date of receipt of the request to invoke arbitration. Representatives of the Parties should meet within ten calendar days of receipt of the list of arbitrators to select one to hear the grievance (unless an extension is mutually agreed upon). Each side will strike one name from the list in turn. The name remaining after each side has struck three, shall hear the grievance. A flip of a coin will decide which party strikes first. After an arbitrator has been selected, the parties should submit the name to the FMCS within seven calendar days. When the selected arbitrator notifies the Parties of his or her availability to conduct the hearing, the Parties should meet within seven calendar days to reach agreement on the hearing date. The arbitrator should be promptly notified of the date.
- B. If either party refuses to participate in the selection process, the other party may unilaterally request a list of arbitrators within 20 calendar days from the date of receipt of the request to invoke arbitration. The party shall serve such request upon the opposing party within three calendar days. If after receipt of the list, a party refuses to participate in the selection of an arbitrator, the opposing party may unilaterally select an arbitrator from the list within 14 days

of receipt. The party shall serve such request upon the opposing party within three calendar days.

- C. Unless otherwise agreed to by the Parties, if an arbitration has not been scheduled within 12 months from the date arbitration was invoked, the grievance will be considered terminated. Exceptions to this time period will be made in circumstances beyond either party's control, including, but not limited to the following examples; third party proceedings that have a direct bearing on the outcome of the grievance or inability or refusal of the arbitrator to schedule the hearing.

### **Section 3 – Hearings**

Arbitration hearings will be held during regular day shift duty hours at the facility where the grievance was filed. Employees who are necessary witnesses will be allowed to testify on duty time.

### **Section 4 – Witness Lists**

At least 15 calendar days prior to the arbitration hearing, the Parties will exchange their witness lists and inform the other party as to whom their representative will be. These lists will ordinarily not be amended except in the event of unforeseen circumstances such as sudden unavailability of a witness or the identification of other witnesses found to have additional vital information. The Local will be provided 48 hours advance notice, in writing, prior to meeting with the witness.

### **Section 5 – Arbitration Timeframes**

All timeframes set forth in this Article maybe extended by mutual agreement of the Parties.

### **Section 6 – Cost**

The filing fee and the cost of the arbitrator and his or her expenses will be borne equally by the Parties. Transcripts of arbitration proceedings are not required. The full cost of transcription service will be borne by the party requesting a transcript. If both parties desire a transcript, the cost will be shared equally.

### **Section 7 – Authority**

The arbitrator will derive his or her authority from this negotiated agreement and, in rendering a decision, must not add to, subtract from, nor modify any terms of this Agreement.

### **Section 8 – Decision**

The arbitrator will be requested to render his or her decision within 30 days.

### **Section 9 – Decision on the Record**

In matters when both parties stipulate the issue(s) in dispute as well as the precipitating facts, a brief in support of each party's position may, by mutual agreement, be submitted to the arbitrator for a decision on the record in lieu of an evidentiary hearing. Simultaneous service of briefs of each party will be accomplished by the arbitrator.

## **Section 10 – Grievability/Arbitrability Issues**

Grievability/arbitrability issues will be resolved as threshold issues of arbitration.

## **Section 11 – Appeals**

Either party may appeal an arbitrator's ruling pursuant to the Statute.

## **Section 12 – Back Pay Act**

Whenever an employee is entitled to receive back pay resulting from the final determination of an arbitrator's award or settlement by the Parties, such pay will be provided to the employee within 30 calendar days of the final determination of the award or effective date of any written settlement agreement.

- A. Within 14 calendar days of compliance with Subsection A above, the Department will provide the Local with copies of appropriate documents to demonstrate compliance has been accomplished.
- B. The arbitrator's decision shall conform to the provisions of the Back Pay Act, 5 USC 5596, where applicable. Such decision will include the payment of back pay, interest and attorney's fees, when appropriate.

# **ARTICLE 42 – EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

## **Section 1 – Policy**

The Department and the Union affirm their commitment to the policy of providing equal employment opportunities to all employees and to prohibit discrimination because of race, color, religion, sex (including gender identity, transgender status and sexual harassment), sexual orientation, genetic information, national origin, age (40 years of age and over), or individuals with disabilities.

## **Section 2 – Equal Employment Opportunity Program**

- A. The Department and the Union, in meeting their individual responsibilities, commit to following the law, government-wide regulations, this Agreement and applicable Department policy regarding EEO related issues.
- B. The Department's EEO Program is designed to promote equal access and employment opportunity in every aspect of the Departmental personnel policy and practice in accordance with applicable law and government-wide rules and regulations. Please refer to Section 8 below for information referencing applicable laws, rules, government-wide regulations and VA policies which may be applicable to this Article.

## **Section 3 – Reasonable Accommodations for Qualified Employees with Disabilities**

- A. In accordance with 29 USC 701 et seq. (Rehabilitation Act of 1973, as amended), the American with Disabilities Act Amendments Act (ADAAA) of 2008, the Vietnam Era Veterans Readjustment Assistance Act of 1974 as amended and other government-wide rules and

regulations pertaining to the employment of individuals with disabilities including VA Handbook 5975.1, the Department will develop and maintain an affirmative action program for the hiring, placement, and advancement of qualified individuals (including Veterans) with disabilities.

- B. The Department will provide reasonable accommodation to a *qualified individual with a disability* as defined by the Rehabilitation Act of 1973. Consistent with VA policy, the Department shall process an employee's request for reasonable accommodation and provide accommodations as soon as possible, normally within 30 calendar days from the date the request was received. The Parties recognize that individual accommodations will be determined on a case-by-case basis, taking into consideration the employee's specific disability, the employee's suggestions for reasonable accommodations, existing limitations, the work environment, any threat to the health and safety of any employee, and undue hardship imposed on the operation of the Department's program.
- C. The Parties agree that reasonable accommodation means an adjustment made to a job and/or the work environment that enables a qualified person with a disability to perform the essential functions of that position.
  - 1. The Department shall give full consideration to the hiring, placement and advancement of qualified individuals with disabilities.
  - 2. Consistent with law, government-wide regulations and VA policies, the Department will offer reasonable accommodation to known physical or mental limitations of qualified individuals with a disability regardless of the type of appointment, unless the Department can demonstrate that the accommodation would impose an undue hardship on the operation of the Department's program as defined in 29 CFR 1614.203.
- D. Qualified employees with disabilities may request specific accommodations. However, the Department is not required to provide the employee's accommodation of choice as long as the Department provides a reasonable accommodation, in accordance with 29 CFR 1614.203.
  - 1. For employees with disabilities, job restructuring is one of the principal means by which some qualified workers with disabilities can be accommodated. The Department recognizes that job restructuring may constitute a reasonable accommodation such as reallocating or redistributing marginal (non-essential) job functions that an employee is unable to perform because of a disability or altering when or how an essential or marginal (non-essential) function is performed. The Parties recognize, however, that the Department has no duty to eliminate or reallocate the essential functions of a position as a reasonable accommodation. The principal steps in restructuring jobs are:
    - a. Identify which factor, if any, makes a job incompatible with the worker's disability.
    - b. If a barrier is identified in a non-essential job function, the barrier may be eliminated so that the capabilities of the person may be used to the best advantage.
    - c. Job restructuring does not alter the essential functions of the job; rather, any changes made are those which enable the person with a disability to perform those essential functions.

2. The Department facilities shall be accessible to employees with disabilities.
  3. Where the Department has determined that such a reasonable accommodation is appropriate, an employee shall be provided assistive devices when determined that the use of the equipment is necessary to perform official duties. Such equipment does not cover personal items which the employee would be expected to provide such as hearing aids or eyeglasses.
  4. Where the Department has determined that such a reasonable accommodation is appropriate, the Department will provide employees with disabilities the use of readers, interpreters and work related personal assistance.
- E. For the purpose of continuing to provide reasonable accommodations the Department agrees to provide interpreter services for those employees who seek Local assistance and/or representation for their individual concerns. To the extent possible, interpreter services should be arranged in advance unless the employee wants to retain confidentiality.
  - F. To provide employees with disabilities equal opportunity to perform official business travel, certain additional travel expenses necessarily incurred to reasonably accommodate the employee's disability may be reimbursed under the Federal Travel Regulations.
  - G. Employees with disabilities may, where appropriate as a reasonable accommodation, utilize work-at-home accommodations or telework settings.
  - H. The Department will be liberal in granting leave to accommodate the disability of the employee. For example:
    1. The Department may grant any form of leave under this paragraph if the employee's current sick leave balances do not cover the absence from duty.
    2. Sick leave can be appropriately used by individuals with disabilities (who use prosthetic devices, wheel chairs, crutches, guide dog, or other similar type devices) for equipment repair or guide dog training or medical treatment.
  - I. The Department will provide employees with disabilities full consideration for all training opportunities. Once an employee is selected for training, the Department will provide reasonable accommodations to the employee to attend and complete the training. It is the intent of the Department to provide job related training opportunities to qualified employees with disabilities on the same basis as non-disabled employees consistent with operational needs.

#### **Section 4 – Affirmative Employment Plans**

- A. The Parties shall develop, if not in existence, Affirmative Employment Plans. Where such plans exist the Parties shall review them annually and the Union may suggest changes to improve the plan.
- B. Affirmative Employment Plans should include provisions for reviewing individual services to ensure that affirmative employment policy is apparent within the service.

- C. The Union, at the national and local levels, will be given an opportunity to consult as appropriate on Affirmative Action Program Plans. At the national and local levels, the Department will inform the Union/Local of changes required by the Equal Employment Opportunity Commission (EEOC) or the Office of Personnel Management (OPM) in national and local affirmative action program plans, and will give the Union/Local a copy of such changes. The Department will also provide the Union/Local with copies of the annual reports of accomplishments on Affirmative Action Programs submitted to EEOC or OPM. When a duty to bargain is triggered by the Statute, the Department will give notice and bargain at the appropriate level pursuant to Article 13 - National Consultation Rights and Mid-term Bargaining regarding Affirmative Employment Plans.
- D. The Department and each local facility or installation preparing an Affirmative Employment Plan will provide a copy, including statistical data, to the designated national Union representative and the local Union President or designee.

### **Section 5 – Information, Data and Reports**

- A. The Department agrees to provide employees with electronic or written (as applicable) access to information describing the discrimination complaints procedures. When requested, a printed copy of the applicable procedures will be provided to the employee. The Department will ensure information pertaining to the EEO complaint process will be posted on the designated facility bulletin boards and on the Department's website.
- B. The Department agrees to post the telephone number and other contact information for the Office of Resolution Management (ORM) and local EEO representative, electronically and on appropriate bulletin boards. Employees with questions regarding procedures involving the EEO complaint process and applicable timeframes should contact a local EEO official or the VA's ORM for information and assistance.
- C. Any employee who wishes to file or has filed an EEO complaint shall be free from coercion, interference, dissuasion, and reprisal.
- D. Upon request, the Department agrees to provide the Local current statistics concerning discrimination complaints filed by employees consistent with applicable laws, rules, and regulations regarding the release of information.

### **Section 6 – Alternative Dispute Resolution**

- A. Consistent with Article 39 - Alternative Dispute Resolution (ADR) and EEOC management directive MD-110 and MD-715 the ADR process may assist in achieving early resolution of an EEO complaint.
- B. ADR provides a means of improving the efficiency of the federal EEO complaint process by attempting early informal resolution of EEO disputes.
- C. Aggrieved employees who voluntarily seek pre-complaint counseling within the first 45 days of the occurrence must be fully informed of:
  - 1. How the Department's ADR program works in accordance with 29 CFR 1614.105 and when filing individual complaints (29 CFR 1614.106) or class complaints (29 CFR 1614.204);

2. The opportunity to participate in the program where the Department agrees the use of ADR in a particular case. 5 USC 572(b) provides some specific circumstances when the Department will consider not using ADR; and
3. The right to file a formal complaint if ADR does not achieve a resolution.

### **Section 7 – Special Emphasis Program Coordinator/EEO Advisory Committee**

- A. The Union will be allotted a representative to serve on the Department of Veterans Affairs Diversity Council (VADC). In the event the Department establishes a new EEO committee at the national level and the committee allows for representation from labor organizations, the Union will be able to appoint a representative on the committee. When the Department holds face to face meetings for the VADC, it will authorize travel and per diem consistent with Article 19 - Official Travel. Official time to attend such meetings shall be in accordance with Article 6 - Official Time.
- B. The Local may appoint a member to serve on the local EEO Committee or equivalent. In addition, the Local may submit other names for consideration by the Department. Official time to attend such meetings shall be in accordance with Article 6 - Official Time.
- C. The Director or his/her designee will request nominations from the Local and the Local may submit names, for consideration by the Department to serve as Special Emphasis Program Coordinators on a collateral duty basis.

### **Section 8 – References**

The following are provided for informational purposes regarding selected laws, government-wide regulations and Department policies that may apply to issues in this article:

- A. Title VII of the Civil Rights Act of 1964
- B. Rehabilitation Act of 1973, as amended (29 USC 701 et seq.)
- C. Age Discrimination in Employment Act of 1975, as amended (29 USC 621 et seq.)
- D. Equal Pay Act of 1963, as amended (29 USC 206(d))
- E. Pregnancy Discrimination Act of 1978 (42 USC 200e et seq.)
- F. Genetic Information Nondiscrimination Act (42 USC 2000ff et seq.)
- G. Administrative Dispute Resolution Act 1996 (5 USC 571 et seq.)
- H. Alternative Dispute Resolution Act of 1998
- I. Executive Order 11478, as amended by 13087 and 13152
- J. Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR ACT) of 2002 (5 USC 2301)
- K. Employees Right to Petition Congress (5 USC 7211)
- L. VA Directive 5977
- M. Veterans Preference Act of 1944
- N. 29 CFR Part 1614
- O. EEOC Management Directive 110
- P. EEOC Management Directive 715

## **ARTICLE 43 – SEXUAL HARASSMENT**

## **Section 1**

- A. Sexual harassment is a form of employee misconduct and discrimination, which undermines the integrity of the employment relationship. All employees must be allowed to work in an environment free from unsolicited and unwelcome sexual overtures. Sexual harassment debilitates morale and interferes in the work productivity of its victims and coworkers.
- B. The Department and the Union do not tolerate verbal or physical conduct that harasses, disrupts, interferes with performance, or creates an environment that is intimidating, offensive or hostile. Additionally, the Parties do not tolerate or condone any form of harassment or retaliation towards employees who report incidents of harassing behavior or assist in any inquiry about such a report. The goal of the Department is to create a work environment free from sexual harassment and be in full compliance with law, government-wide regulations and Department policies, including but not limited to VHA Directive 2009-071.

## **Section 2**

Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- A. Submission to such conduct is made either explicitly or implicitly a term of condition of an individual's employment, or
- B. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- C. Such conduct has the effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

## **Section 3**

In order to ensure compliance with this Article, Department officials will annually distribute to all employees, a copy of the VA Policy Statement and Directive on Sexual Harassment.

## **Section 4**

Consistent with law, government-wide regulations, applicable policies of the EEOC and Article 40 - Grievance Procedure, an employee may file a grievance or complaint of discriminatory harassment regarding an allegation of sexual harassment, as appropriate.

# **ARTICLE 44 – SAFETY, HEALTH AND ENVIRONMENT**

## **Section 1 – General**

A safe and healthy work environment is highly valued by the Department and its employees. All Department officials, Union representatives and employees must adhere to high standards of safety, Health and the environment. Any employee, group of employees, or representatives of employees who believe that an unsafe or unhealthful working condition exists in any workplace are strongly encouraged to report such condition to the appropriate supervisor, the

facility Director, the appropriate Management Safety and Health Official, or the Local. In the case of immediate threat to life or danger of serious physical harm, the employee shall immediately report the situation to a Department official or Safety and Health representative. Consistent with this Article, the Department will investigate and abate workplace hazards and/or provide engineering and administrative controls, material substitution, training and personal protective equipment to reduce employee exposures to recognized safe levels. The Department will provide and maintain safe working conditions for all employees in accordance with the law, including but not limited to the Occupational Safety and Health Act (referred to as the Act) and codified in 29 USC 668, any implementing regulations, and other applicable government-wide regulations and VA policies. Please refer to Section 33 - References below for information referencing applicable laws, rules, government-wide regulations and VA policies which may be applicable to this Article.

## **Section 2 – Union Participation**

- A. The Department recognizes that Union participation in its Occupational Safety and Health Program is important for the success of that Program. The Union may designate representatives at the Facility level, Intermediate levels, and the National level who will represent the interests of the Union and the employees in the development and implementation of this Program. The Parties agree that work on the Safety and Health Program is a part of the ongoing Partnership between the Department and the Union. Time spent serving as a union representative during safety and health inspections, as a member of a Safety and Health Committee or its subcommittees, developing plans for abatement of materials, investigating accidents and safety related committee assignments will be considered official time.
- B. The Union will designate two National Safety, Health and Environment Representatives. Official time for these representatives will be consistent with Article 6 - Official Time.
- C. The National Safety, Health and Environment Representatives will work with the Department's National Level Safety, Health and Environment officials in developing and implementing the program. In the event that an Administration of the Department (for example, VHA and NCA) or a national program administered by an Assistant Secretary (for example, the VA's Office of Information and Technology) creates or administers an additional national level safety program, the Department will meet their bargaining obligations consistent with Article 13 - National Consultation and Mid-term Bargaining. This may include the opportunity to participate in the development and implementation of any safety committee or program, which impacts working conditions of employees.
- D. The National Safety, Health and Environment Representatives will be the points of contact for any Safety, Health and Environment initiatives at the National and Intermediate levels that impact bargaining unit employee safety, health and environment.
- E. The Parties will develop joint training programs and materials in safety, Health and environment for bargaining unit employees.
- F. The Representatives will provide training and assistance to Locals in the performance of their responsibilities under the Program.

- G. The National Safety, Health and Environment Representatives may visit facilities within the bargaining unit to work with Locals on safety, Health and environment matters. Notice of such visits will be given to the Director of each facility in advance.
- H. The National Safety, Health and Environment Representatives will be provided technology in accordance with Article 56 - Use of Official Facilities.
- I. Bargaining unit employees who spend time on the National Safety and Health Committees initiated by the Department in a nonrepresentational capacity will be on duty time. Bargaining unit employees serving in a Union representational capacity will be on official time consistent with Article 6 - Official Time. Travel for Union representatives will be consistent with Article 19 - Official Travel.
- J. The National Safety, Health and Environment Representatives will be given copies of all Designated Agency Safety and Health Official (DASHO) letters and other National level communications to the field on safety and health matters as well as all safety manuals and publications. The National Safety, Health and Environment Representatives will be the point of contact for any Safety, Health and Environment initiatives at the National and Intermediate levels that impact employee safety and health. The Parties will develop and maintain joint training programs and materials if not already in place, in safety, health and environment for bargaining unit employees.
- K. Consistent with Article 19 – Official Travel, the Department will pay tuition, travel, and per diem expenses for each National Safety, Health and Environment Representative to attend at least one conference each year.
- L. NAGE may designate additional representatives to work on individual projects at the National or Intermediate levels within the Department to develop and implement the Safety, Health and Environment Program at those levels consistent with Article 6 – Official Time.
- M. Each Local at a bargaining unit facility may designate a Safety, Health and Environment Representative who will serve as the Local's point of contact for safety, health and environment matters at the facility. Functions of Local Safety, Health and Environment Representatives include, but are not limited to the following:
  - 1. Conduct joint inspections;
  - 2. Issue joint reports regarding inspection findings to the appropriate Department official;
  - 3. Participate, as appropriate, in inspections conducted by governmental authorities outside the Department's control including Joint Commission;
  - 4. Receive and investigate employee reports of unsafe or unhealthy conditions. Employee should submit such reports to both the Local and The Department representatives. In accordance with 29 CFR 1960.28(d)(4) the Department's inspection or investigation report, if any, shall be made available to the employee making the report and Local within 15 days after completion of the inspection, for safety violations or within 30 days for health violations, unless there are compelling reasons.
  - 5. Develop and monitor abatement plans needed to correct local conditions as appropriate all personnel subject to the hazard shall be advised of the action and of the interim

protective measure in effect and shall be kept informed of the subsequent progress on the abatement plan.

6. Refer matters to Environmental Protection Agency (EPA), OSHA and/or National Institute for Occupational Safety and Health (NIOSH) as appropriate.
  7. Receive copies of any written notice referred by a facility official in response to an employee report of an unsafe or unhealthy condition, in compliance with 29 CFR 1960.28(d)(4) time limits.
  8. Monitor preventive maintenance (PM) plans for Heating, Ventilating and Air Conditioning (HVAC) system components. PM plans will be provided to the Local upon request.
  9. Receive all reports of security incidents involving threats to employees, their offices, and property (such reports may be sanitized as appropriate).
  10. Participation on Disruptive Behavior Committees (DBC) and Employee Threat Assessment Teams (ETAT) at the local levels.
  11. Receive all accident reports (such reports may be sanitized as appropriate).
- N. Each facility will have a Safety, Health and Environment Committee in accordance with 29 CFR 1960 and all its subparts. Fire prevention may be an appropriate subject for this committee to address. The Local will be afforded a representative for each Local on such Committees. The facility's Committee may establish subcommittees or workgroups in any service or location, and the Local will be represented on each subcommittee. The Local will have a representative on any other committee that relates to the safety, health and environment issues of the bargaining unit.
- O. The Local will be given the opportunity to participate in all scheduled and unscheduled workplace inspections, which are intended to detect hazards to employee safety and health, whether conducted by Department Safety and Health personnel, non-Department employees acting on behalf of the Department, OSHA and Environmental Protection Agency (EPA) personnel, or other regulatory agencies and bodies.

### **Section 3 – Standards**

- A. The Department shall comply with occupational safety and health standards issued under Section 6 below of the Act or where the Secretary of Labor has approved compliance with alternative standards in accordance with 29 CFR 1960. The Department will notify the Union in accordance with Article 13 – Mid-Term Bargaining prior to the submission of any alternate standards to the Secretary of Labor. On a case by case basis, the Parties may adopt more stringent safety or health standards to address specific concerns.
- B. Personal Protective Equipment (PPE), as required by appropriate OSHA standards to protect employees from hazardous conditions encountered during the performance of their official duties, will be provided and replaced as necessary when determined by the Department, at no cost to employees required to wear specific PPE. Employees who are exposed to the hazards of outdoor environments, such as heat or extreme cold weather, will be provided appropriate PPE in accordance with OSHA requirements.

- C. Job Hazard Assessments or Risk Assessments to determine the need for PPE will be conducted by each facility for each workplace. These assessments will also evaluate the need for, and feasibility of, engineering controls or other devices designed to reduce workplace injuries and illnesses or eliminate the need for PPE. When assessments determine the appropriateness of PPE, affected employees will have the opportunity to choose from available and appropriate styles and sizes to optimize employee comfort and protection. Consistent with 29 CFR 1910.132, the Department shall provide training to those employees who are required by this section to use PPE and shall document in writing that the training was provided in the proper use, storage and care of PPE in accordance with Article 23 – Training and Career Development.
- D. Designated Local Safety Representative will be provided PPE as necessary for the performance of their duties.

#### **Section 4 – Report, Evaluation and Abatement of Unsafe and Unhealthy Working Conditions**

- A. Any employee, group of employees, or representatives of employees who believe that an unsafe or unhealthy working condition exists in any workplace have the right to report such condition to the appropriate supervisor, the facility Director, the appropriate Department Safety, Health and Environment Official, or the Local. In the case of immediate threat to life or danger of serious physical harm, the employee shall immediately report the situation to a Department official or Safety, Health and Environment representative.
- B. Safety, Health and Environment personnel and the Local safety representative will evaluate employee reports of unsafe or unhealthy working conditions in accordance with 29 CFR 1960. The Local will be formally notified of all serious hazards as defined in 29 CFR 1960. Abatement plans will be developed with Union input.
- C. The Department agrees to ensure prompt abatement of unsafe and unhealthy working conditions.
- D. If there is an emergency situation in an office or work area, the first concern is for the employees, veterans and the public. Should it become necessary to evacuate a building, the Department will take precautions to guarantee the safety of employees. Individuals will not be readmitted until it is determined in conjunction with whatever expert resources have been called in, that there is no longer danger to the evacuated personnel. Expert resources may include, but are not limited to, local police departments, the Federal Protective Service, local fire departments, appropriate health authorities, etc. If no outside expert resources were contacted, individuals will be readmitted when the Department determines that no danger exists to the evacuated personnel. The Local will be notified as soon as possible regarding the emergency situation.
- E. An abatement plan will be prepared in accordance with 29 CFR 1960 and VHA Handbook 7701.01 if the abatement of an unsafe or unhealthy working condition will not be possible within thirty calendar days. Such plan shall contain a proposed timetable for the abatement and a summary of steps being taken in the interim to protect employees from being injured as a result of the unsafe or unhealthy working conditions.
- F. When abatement action is dependent upon GSA or other lessors, the abatement must be

prepared in conjunction with appropriate members of that group. The Safety, Health and Environment Committee will be timely notified and consulted, and all personnel subject to the hazard shall be advised of interim measures in effect and shall be kept informed of subsequent progress on the abatement.

- G. Any equipment, devices, structures, clothing, supplies, tools or instruments that are found to be unsafe will be removed from service, locked out, tagged-out or rendered inoperative, as appropriate.

### **Section 5 – Comprehensive Analysis of Injuries and Illnesses**

- A. The Department agrees that a comprehensive analysis will be performed to determine causes and appropriate corrective actions concerning patterns of injuries and illnesses that occur at each facility. The analysis will examine such factors as: the general conditions under which the affected employee's job is performed; the processes and procedures involved in the performance of that job; and any unusual factors that may have contributed to the injury or illness. Recommendations to correct the conditions that contributed to the injury or illness will be included in the written results of this analysis and presented to the facility safety committee. The Department shall provide a copy of any and all analyses performed within 15 days of completion to the Local President.
- B. The Department shall pay particular attention where patterns of injuries or illnesses are found in a given occupation, facility or part of facility. Experience in correcting hazards will be shared within the Department in an effort to find optimal ways of reducing injuries and illnesses.
- C. Consistent with 29 CFR 1904.32, VA Directive 7700 and VHA Directive 2006-033, OSHA Form 300-A, Summary of Work-Related Injuries and Illnesses, is to be posted in the workplace annually. Copies of the annual summary shall be posted for a minimum of 30 consecutive days in a conspicuous place or places in the facility where notices to employees are customarily posted. The Department shall take necessary steps to ensure that such summary is not altered, defaced or covered by other material.

### **Section 6 – Imminent Danger Situations**

- A. In accordance with 29 CFR 1960.2(u), the term "imminent danger" means any condition or practice in any workplace which is such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through normal procedures.
- B. In the case of imminent danger situations, employees shall make reports by the most expeditious means available. The employee has a right to decline to perform his or her assigned tasks because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures. In these instances, however, the employee must report the situation to a Department official or Safety and Health representative.
- C. If the condition can be corrected and the corrected condition does not pose an imminent danger, the employee must return to work. If the supervisor cannot correct the condition or

does not feel that an imminent danger condition exists, the supervisor shall request an inspection by facility safety and health personnel. While awaiting an inspection and the completion of any repairs resulting from the inspection, the Department may require that the employee perform alternative tasks for which the employee is qualified.

- D. A Local representative will be given the opportunity to be present during the inspection by the safety and health personnel. The Department shall investigate all instances where safety, health and environment personnel have failed to notify the Local and provide an opportunity to be present during inspections. The Department shall provide the Local with a written explanation stating the reason(s) for such failure and any corrective actions taken.
- E. If the safety, health and environment personnel decide the condition does not pose an imminent danger, the instruction to return to work shall be in writing and contain a statement declaring the area or assignment to be safe. When the employee is notified of this decision the Local will be notified at the same time. Refusal to perform an assignment after the safety, health and environment personnel has deemed it to be safe may result in disciplinary action.
- F. When the Department receives a report that a dangerous, unhealthful or potentially dangerous or unhealthful condition is present at a particular work site, the Department shall notify the Safety and Health Committee and the Local Safety, Health and Environment representative(s) of the alleged dangerous or unhealthful conditions.

### **Section 7 – Training**

- A. The Department shall provide safety and health training for employees, including specialized job safety training appropriate to the work performed by the employee. This training will address the Department's and the facility's Occupational Safety and Health Program, with emphasis on the rights and responsibilities of employees.
- B. The Department will provide basic and specialized safety and health training for Local Safety and Health Representatives. Such training may include but is not limited to: Basic, Intermediate training courses, OSHA 10 or 30 hour OSHA construction safety in accordance with 29 CFR 1960, 29 CFR 1910, 29 CFR 1926, VHA Handbook 7701.1 and VHA Construction Safety Directive.

### **Section 8 – Allegations of Reprisal**

The Department and the Union agree there will be no restraint, interference, coercion, discrimination or reprisal directed against an employee for filing a report of an unsafe or unhealthful working condition, for participating in Department Occupational Safety and Health Program activities or because of the exercise by an employee of any right afforded by Section 19 of the Occupational Safety and Health Act, Executive Order 12196, 29 CFR 1960, VA Directive 7700, VHA Directive 7701 or VHA Handbook 7701.1.

### **Section 9 – Use of Insecticides and Other Like Chemicals**

- A. The Department is responsible for the safe use of insecticides and chemicals in and around employee work areas. This may include the use of paint, carpet glue, HVAC cleaning agents, and similar construction or maintenance chemicals.

- B. Whenever such chemicals are used in the work environment, the Local and employees will receive advance notice.
- C. If an employee has special health care needs which may be affected by the use of certain insecticides or chemicals, the employee should immediately notify his or her supervisor and the Department will work with the employee to address their health needs.

### **Section 10 – Leases**

- A. Prior to occupancy by any employee of space occupied by the Department, the Department will provide the Local a copy of the pre-occupancy inspection if available and upon request to the contracting officer. All leases will comply with law, applicable government-wide regulations and VA policies.
- B. Pursuant to 29 CFR 1960.30(d), when a hazard cannot be abated before occupancy, the Local and all employees subject to the hazard shall be advised of the preliminary abatement plan and of interim protective measures in effect, and shall be kept informed of subsequent progress on the abatement plans.

### **Section 11 – Temperature Conditions**

The Parties recognize that temperature conditions in and around work areas can have a direct bearing on employees' health. As a part of an overall emergency contingency plan, each facility will have a written plan for appropriate emergent cooling or heating procedures. The Parties agree that the problem of temperature extremes, either hot or cold, and appropriate measures to reduce the risk of exposed employees are appropriate matters for referral to established Safety and Health Committees or to the Local Safety, Health and Environment Representatives.

### **Section 12 – Asbestos**

- A. The Department shall conduct an inspection at each facility to determine the existence of asbestos every three years.
- B. Consistent with OSHA regulations, qualified inspectors will inspect the facility for asbestos under appropriate EPA/OSHA guidelines and standards.
- C. The Department will review all construction, space modification contracts or work orders to determine if asbestos is present and, if so, how to proceed with appropriate removal or containment.
- D. The Department will notify the Local in writing prior to initiating procedures for asbestos removal. In case of emergency, the Department will notify the Local within two administrative workdays after the emergency occurs.
- E. Where it has been determined that friable asbestos exists, The Department will conduct air sampling.
- F. If air sampling indicates that airborne concentrations of asbestos fibers exceeds regulatory levels, exposed employees will be notified in writing of the exposure within five days after discovery of the excessive asbestos concentration. The Department will

assist affected employees in filling out and filing the appropriate OWCP forms. Copies of sampling results will be provided to the employee and Local upon request.

- G. If the airborne asbestos concentration amounts are exceeded, the Department will protect employees through abatement of the asbestos hazard pursuant to 29 CFR 1910.1001(f).
- H. Local Safety, Health and Environment Representatives will be given training on asbestos removal and permitted to monitor removal procedures.
- I. Local Safety, Health and Environment Representatives will be given a copy of all tests monitoring asbestos levels. Privacy Act protected information may be redacted.
- J. Asbestos abatement plans may include the discontinuance of work or the shifting of employee work location. Notice of such abatement action will be provided to the Local in advance, except in an emergency situation, in which the Local will be notified as soon as possible. The Department will meet its bargaining obligations in both instances consistent with Article 13 – National Consultation Rights and Mid-Term Bargaining.
- K. The Department will ensure that all areas immediately adjacent to where asbestos is being abated will be monitored and kept free of asbestos dust and fibers in accordance to OSHA regulations. The Local will be provided written copies of all monitoring results upon request.
- L. Asbestos will be managed and monitored in accordance with EPA and OSHA criteria.
- M. Asbestos and asbestos-contaminated material shall be collected, and disposed of in accordance with appropriate EPA and OSHA regulations.
- N. The Department will make available medical examinations and consultations to each employee prior to assignment to an area containing asbestos which requires that negative pressure respirators be worn and exposure may exceed 30 days per year.
- O. When an employee is assigned to an area where substantive asbestos exposure will exceed 30 or more days per year, a medical examination must be given within 10 working days following the 30th day of exposure. Employees showing symptoms of asbestosis will be X-rayed in accordance with OSHA regulations.
- P. The Department shall record all measurements taken to monitor employee exposure to asbestos including tremolite, anthophyllite, and actinolite. Such records shall be maintained in accordance with applicable laws and government regulations. The records will include information such as the date of measurement, the operation which caused exposure, the sampling method employed by the Department, the number, duration and results of the samples, type of protective devices worn, and name of the employee exposed.
- Q. The Department will maintain and initiate if necessary, a maintenance program in all facilities that contain asbestos. Such a maintenance program will include:
  - 1. Inventory of all asbestos containing materials in a facility;

2. Periodic examinations of asbestos containing materials to detect deterioration;
  3. Written procedures for handling asbestos materials;
  4. Written procedures for asbestos disposal;
  5. Written procedures for dealing with asbestos related emergencies;
  6. Training for employees who are required to work with asbestos containing materials (ACM) on how to identify the materials and read blueprints that indicate where the ACM is located;
  7. Training of those required to handle asbestos containing material in safe handling procedures;
  8. Training of all affected personnel in prohibited activities which would enhance dangerous exposure; and,
  9. The local safety committee will address the need and communication of asbestos awareness and training at the Local level. Online asbestos training can be found in TMS.
- R. Such information must be provided to each employee on a yearly basis and include instructions regarding safe asbestos handling. Also, access to information regarding exposure records and medical records must be provided on a yearly basis to the Local President.
- S. Upon request of any bargaining unit employee exposed to asbestos above OSHA regulatory limits, the Department shall make available, at no cost to the employee, pulmonary function tests and X-rays, as appropriate and consistent with OSHA regulations, but no less than once every five years.

### **Section 13 – Mold**

- A. The Department shall conduct an inspection annually and as needed in each facility to determine the existence of mold.
- B. The Department will review all construction contracts, space modification contracts and work orders to determine if mold is present and, if so, how to proceed with appropriate removal or containment.
- C. The Department will notify the Local prior to initiating procedures for mold removal.
- D. Prior to employees being required to perform mold remediation they will be provided proper PPE.
- E. If the Department conducts mold sampling tests, the Local Safety, Health and Environment Representative will be provided a copy of the test.
- F. The Department will assist affected employees in filling out and filing the appropriate OWCP forms. If surface or air sampling indicates excessive or dangerous levels of mold, employees will be notified in writing within 5 days after discovery. If the tests do not create an excessive

or dangerous level but the exposure substantially limits a major life activity of an employee in that work area, the employee may request reasonable accommodation consistent with Article 42 – Equal Employment Opportunity.

- G. When the Department becomes aware of the existence of mold they will immediately abate it or develop a plan to have it abated. The Local will be given the opportunity to provide input into the development of any abatement plan that impacts bargaining unit members. The Department will meet its bargaining obligations prior to implementation of its abatement plan.

#### **Section 14 – Use of Respirators**

The Local may provide input on the types of respirators used and the fit testing process.

#### **Section 15 – Emergency Preparedness**

##### **A. General Requirements**

1. Each facility shall have an emergency preparedness plan. This plan will publish the chain of command, which will identify a member of the Department who will be physically present for employee direction during all scheduled work hours in each installation. The plan will also cover employee procedures in the event of snow, blizzard, fire, earthquake, bomb threat, tornado, flood, hurricane, weapons of mass destruction, or similar locally or nationally declared emergencies. The Department will conduct evacuation drills, normally conducted on a quarterly basis.
  2. For each facility with an Emergency Preparedness Committee, the Local may appoint a union member to the committee.
- B. The Department agrees to make reasonable efforts to assure that each installation has adequate personnel available to administer Cardio-Pulmonary Resuscitation (CPR). All clinical personnel and other employees required to respond to code calls will become familiar with all work site locations within the facility.
1. The Department will provide CPR shields and masks for those employees administering CPR.
  2. Department Training for CPR certification or recertification will be at no cost to the employees.
  3. Automatic Emergency Defibrillators (AED) will be placed in accessible areas as determined by the Department and staff will be trained in the use of them.
- C. Emergency treatment for on the job injuries is covered in Article 45 – Occupational Health.
- D. The Department agrees to insure employee designated first aid supplies are readily available to employees in the event of injuries or illness.
- E. All phones will be labelled with appropriate emergency numbers. Employees and the Local are encouraged to notify the Department if any phones are identified without emergency numbers.

## Section 16 – Smoking Environmental Hazards

- A. The following is being provided for information purposes only:
1. In 1992, Congress passed Public Law 102-585, requiring VHA medical centers, nursing homes and domiciliary care facilities establish smoking areas for patients, and residents, in a way that is consistent with medical requirements and limitations.
  2. In 1997, Executive Order 13058 established a policy of providing smoke-free environments for Federal employees and members of the public visiting or using Federal facilities.
  3. In 2006, this evidence was reviewed and published in the United States Surgeon General's Report, "The Health Consequences of Involuntary Exposure to Tobacco Smoke," which reported that "secondhand smoke causes premature death and disease in children and in adults who do not smoke."
  4. The Parties agree that even though the Department is still required to provide smoking areas for patients and residents, the Parties should work together to create additional measures to further decrease exposure to secondhand smoke for VA patients, residents, employees, visitors and volunteers and to promote tobacco use cessation.
- B. Recognizing tobacco's risk to employees' health and well-being, the Department and the Union mutually support and encourage all efforts by employees to quit tobacco use. The Department, consistent with law, government-wide regulations, this Agreement, and VA policy, specifically VHA Directive 2008-052, or its successor will implement safeguards to prevent smoking, to strengthen existing smoke-free policies and to eliminate environmental hazards in the workplace.
- C. In the event of a change in law or decision by OPM to mandate hazard pay for exposure to environmental tobacco smoke, the Department will immediately act to ensure employees receive such compensation, consistent with the law or government-wide regulation, as applicable. Additionally, if the change triggers a duty to bargain, the Department will do so, consistent with Article 13 – National Consultation Rights and Mid-term Bargaining.
- D. An employee who sustains a job related injury or illness may file a claim with the Office of Worker's Compensation consistent with Article 46 – Work Related Injury / Illness.
- E. Smoking Cessation Program
1. Consistent with 5 USC 7901 and OPM guidance, the Department may use appropriated funds to provide Nicotine Replacement Therapy (NRT) and over the counter (OTC) medications at no cost to employees. Programs will include or be similar to programs conducted by the American Lung Association or the American Heart Association.
  2. VA may provide free NRT and OTC medications to non-VHA employees who seek assistance with quitting smoking.
  3. Consistent with Handbook 5019 and VHA Directive 2010-041, it is VHA policy to provide free OTC formulations of NRT in appropriate combinations of the nicotine

patch, gum and lozenges to employees who are seeking assistance with quitting smoking as part of preventive health initiatives for employees. Regarding VHA employees, a number of VA medical centers have successfully implemented policies to provide free OTC and NRT for employees who are seeking assistance with quitting smoking. These include:

- a. Providing free OTC and NRT purchased by VA;
  - b. Providing OTC and NRT through an outside vendor;
  - c. Providing free OTC and NRT through existing employee health clinics;
  - d. Providing free OTC and NRT through existing facility tobacco cessation programs;
  - e. Providing vouchers for purchasing OTC and NRT through VA canteens; and,
  - f. Contracting with state or private telephone counseling quit line for services, including OTC and NRT.
4. Additional procedures not covered in this section including providing smoking cessation services to non-VHA bargaining unit employees and the mechanics of how this is administered, may be negotiated at the local level.

## **Section 17 – Ergonomic Workstation Design**

- A. Definitions - The following definitions are being provided for informational purposes only:
1. Video Display Terminal (VDT) is a term used, especially in ergonomic studies, for the computer display.
  2. A display is a computer output surface and projecting mechanism that shows text and often graphic images to the computer user, using a cathode ray tube (CRT), liquid crystal display (LCD), light-emitting diode, gas plasma, or other image projection technology. The display is usually considered to include the screen or projection surface and the device that produces the information on the screen. In some computers, the display is packaged in a separate unit called a monitor.
  3. A CRT is a vacuum tube containing one or more electron guns (a source of electrons or electron emitter) and a fluorescent screen used to view images.
- B. The policy of the Department is to provide safe and healthful workplaces for all employees. In keeping with the policy, the Department acknowledges that there are certain ergonomic and environmental factors that can contribute to the health and comfort of VDT users. These factors involve the proper design of workstations and the education of managers, supervisors, and employees about the ergonomic job design and organizational solutions to VDT problems as recommended in various studies published by the NIOSH.
- C. The Department agrees that employees should be provided information about ergonomic hazards and how to prevent ergonomically related injuries. OSHA Safety and Health Guidelines and other available literature could provide this information. The Department

agrees to provide, consistent with VA policy, workstations and equipment (chairs, tables, workstations, lighting, keyboards, screens, and printers, etc.) that meet ergonomic design criteria. It is also agreed that when equipment is purchased, a vendor should provide training on how to safely and properly operate that equipment.

D. An employee may request an ergonomic assessment which will identify the employee's needs and the available modifications. Upon request, the Department will meet with the employee and his or her union representative to discuss the assessment and how to proceed. The Department will further achieve this by:

1. Lighting:

- a. An employee's concern about lighting in his or her work location is an appropriate issue to be raised in the ergonomic assessment.
- b. The Department will place and position computer monitors in work locations so as to avoid unnecessary glare or will allow the use of anti-glare screens, as needed.
- c. The Department will provide lighting that is adequate and appropriate for the work setting.

2. Keyboard and Screen:

- a. An employee's concern about his or her keyboard or computer screen is an appropriate issue to be raised in the ergonomic assessment.
- b. Keyboards should be placed on a level and stable surface for normal keying function and be adjustable vertically and horizontally to fit the employee's height consistent with the specifications of the ergonomic evaluations.
- c. Keyboards, in combination with their supporting surface, chairs, carts and other furniture shall permit employees to adopt and maintain neutral wrist positions.
- d. Screens should be easily adjustable for brightness and field of vision of the employee.
- e. Employees engaged in continuous computer or keyboard use are encouraged to engage in other work duties on a periodic basis (e.g. hourly) to avoid unnecessary eye or wrist strain. Although not required of the employee, the Parties agree that OSHA recommends employees using VDT's for two hours to take a ten-minute "break" from computer tasks. This can be accomplished by performing duties that do not require the use of a VDT. The Parties agree that this recommendation is not a break in addition to the two, 15 minute breaks in Article 15 – Hours of Work. Where there are prolonged periods of VDT use and no other work tasks available, those employees will approach their supervisor for further instructions on other assignments that can be performed. The Supervisor's determination that non VDT work is unavailable does not remove the responsibility to provide the employee a break from the VDT.

3. Printers:

- a. The Department will place printers in a manner so that employees do not have to excessively bend, stoop, or reach to remove printed materials.
- b. Noise exposure related to printers will meet the requirements of 29 CFR 1910.95(b)(1).

### **Section 18 – Indoor Air Quality**

- A. All employees are entitled to work in an environment containing safe and healthful indoor air quality.
- B. The Department shall provide safe and healthful indoor air quality by conforming to laws, guidelines, regulations and policies issued by Federal regulatory agencies such as OSHA.
- C. On-site investigations or inspections will be conducted when a problem concerning indoor air quality or building related illness is brought to the Department's attention.
- D. In compliance with engineering standards, the Department shall maintain ventilation efficiency.
- E. In all facilities, the Department shall ensure that;
  - 1. Appropriate measures are taken to minimize or eliminate the impact of contamination from outside sources such as garages, cooling towers, building exhausts, etc.,
  - 2. Where the levels of such contaminants become health threatening, the Department will either seek to relocate or evacuate the facility.
- F. Microbial Contamination
  - 1. The Department agrees to eliminate or control all known sources of microbial contaminants by assessments and appropriate response to all areas where water collection and leakage has occurred, including floors, roofs, HVAC cooling coils, drain pans, humidifiers containing reservoirs of stagnant water, air washers, fan coil units and filters. Such response will normally require prompt cleaning and repair of contaminated areas.
  - 2. The Department shall:
    - a. Clean and disinfect or remove and discard porous organic materials that are contaminated (e.g., damp insulation in ventilation system, moldy ceiling tiles, and mildewed carpets); and,
    - b. Clean and disinfect nonporous surfaces where microbial growth has occurred with detergents, micro biocides, or other biocides and insuring that these cleaners have been removed before air handling units are turned on.

### **Section 19 – Renovation and Construction**

- A. Wherever the Department decides to alter the physical work site of bargaining unit

employees, the Local will be notified in advance.

B. The Department will:

1. Isolate areas of significant renovation, painting, and carpet laying from occupied areas that are not under construction;
2. Ensure that contaminated concentrations are sufficiently diluted prior to occupancy;
3. Supply adequate ventilation during and after completion of work to assist in dilution of the contaminant level; and,
4. In leased space, work with the lessor or GSA in order to achieve and maintain these standards.

**Section 20 – Wellness Program**

- A. The Parties agree that recognizing, minimizing, and coping with stress are essential parts of employee wellness. The Department will provide training at least annually on stress reduction. This will be a part of each facility's Wellness Program.
- B. Employees who feel they are experiencing harmful levels of job-related stress may contact employee counseling services.
- C. Department facilities will maintain or establish Wellness Committees when not already in effect or subcommittees and/or workgroups to address wellness and health programs.
- D. The Department and the Local support wellness and initiatives that focus on various activities, including physical activity, weight, smoking cessation, stress, healthy lifestyle classes and nutrition.
  1. Therefore, the Department will promote physical fitness and wellness by, at a minimum, providing stress reduction and physical fitness information.
  2. If the Department establishes new fitness centers, the Local will be given an opportunity to bargain as appropriate, consistent with Article 13 – National Consultation Rights and Mid-Term Bargaining. Where existing methods are already in place, they will be continued, unless changed through negotiations.
  3. Employees are encouraged to take advantage of available fitness programs at the facility. Release to participate in fitness programs that occur during duty hours are subject to supervisory approval.

**Section 21 – Equipment, Machinery and Furniture**

- A. Employees are encouraged to report equipment, machinery, or furniture that cause or have potential to cause injuries such as repetitive motion injuries. The Department agrees to investigate such reports expeditiously and to implement appropriate corrective action. All such ergonomic assessments and recommendations shall be in writing and submitted to the local Safety and Health Committee.

- B. The Department will ensure employees have been oriented to the use of new equipment or machinery and will ensure that this equipment or machinery has been inspected before initial use, when required.
- C. The Local will be given an opportunity to be involved in the development of facility policies that address the selection and purchase of equipment, machinery and furniture.
- D. Only qualified personnel shall perform maintenance or repair on moving or operating machines. This does not preclude the normal or necessary adjustments to be made to machinery or equipment while in operation. Qualified personnel shall not be required to perform any maintenance or repair while the machine is in operation where it can be shown that there is a substantial risk of injury or a feasible alternative exists.

## **Section 22 – Workplace Violence**

- A. The Department shall adhere to all appropriate law, regulations, VA directives, and handbooks related to workplace violence. The Department shall provide all bargaining unit employees copies or electronic access to these directives within 30 days of this Agreement. All new employees will receive information on where to access these documents during orientation.
- B. The Parties agree that workplace violence, the threat of violence, and bullying of employees are not tolerated within the Department. Any employee who is subject to violent or potential workplace violence, including bullying behavior, should immediately report the matter to an appropriate Department official including VA police. The employee may also report the matter to the Local or local EEO official.
- C. The Department agrees to develop and maintain, as applicable, a workplace violence prevention policy. Any duty to bargain relating to the workplace violence prevention policy will be done in accordance with Article 13 - National Consultation Rights and Mid-term Bargaining . Local facilities will have policies and procedures to prevent and to respond to workplace violence at VA work sites. In addition, each local facility must have a process to identify, report, monitor, and respond to specific areas with a high potential for workplace violence. Employees will be given training on the workplace violence policy of the local facility and information on how to access it electronically or a hard copy if they do not have computer access. Department information on this topic can be found at [VA Violence Prevention](#).
- D. The Department will make reasonable efforts to protect employees from abusive and threatening occurrences and will take reasonable precautions to ensure such protections.
- E. The Department will arrange for emergency protective assistance at each facility to enable employees to receive assistance if the situation requires.
- F. Whenever an employee is faced with a physically threatening situation, the Department will provide appropriate assistance.
- G. Employees will not be required to divulge personally identifiable information to the public in individual circumstances where the employee reasonably believes harassment or physical abuse may result. In such cases, the employee should inform the supervisor in a timely

manner.

- H. The Department will equip reception areas with appropriate security devices to ensure employee safety, to the maximum extent possible.
- I. Employees will be provided training on the use of Disruptive Behavior Reporting System (DBRS).
- J. Local representatives will be members of the DBC and ETATs.
- K. In accordance with Article 11 – Labor-Management Cooperation, National representatives will have the opportunity to participate in pre-decisional meetings focusing on workplace violence prevention.
- L. Training will be provided to all employees to assist with their individual safety.

### **Section 23 – Safety and Health Records**

- A. The Department agrees to compile and maintain records required by the Occupational Safety and Health Act and VA Safety and Health Programs. The Department agrees to ensure access to employees, former employees and Local representatives to records/logs of facility occupational injuries and illnesses (including copies of accident reports) and to the annual summary of these in accordance with 29 CFR 1960, consistent with law.
- B. The Department and the Local shall identify employees who occupy positions that carry potential risks to their health. The Parties will establish and maintain procedures for the medical surveillance of such employees.

### **Section 24 – Environmental Hazards**

- A. In accordance with applicable laws, rules and regulations, the Department will abate all recognized environmental hazards that are likely to cause death or serious harm.
- B. Employees who have the potential to be exposed to environmental hazards in the performance of their duties shall be appropriately trained in accordance with Section 7 – Training above.

### **Section 25 – Hazardous Duty Pay and Environmental Differential**

- A. Environmental Differential (Federal Wage System)
  - 1. In accordance with 5 CFR Part 532, Subpart E, Appendix A, the appropriate environmental differential will be paid to an employee who is exposed to an usually severe hazard, physical hardship, or a working condition the standards described under the categories stated therein.
  - 2. If, at any time an employee or the Union believes that differential pay is warranted under 5 CFR Part 532, Subpart E, Appendix A, the matter may be raised at Step 3 of the negotiated grievance procedure.
- B. Hazardous Duty Pay

1. Pay for irregular or intermittent duty involving physical hardship or hazard for GS employees will be paid in accordance with the provisions of OPM regulations (5 CFR, Part 550, Sub-part I).
2. Any physical hardship or hazardous duties must be considered as part of position classification. Upon request, the Department shall inform the employee and the Local whether or not such duties were taken into account in establishing the grade of the position and how the duties affected the grade established, including whether, absent those duties, the grade would have been lower.

## **Section 26 – Arrangements for Health Hazards Involving Communicable Diseases**

The Department will:

- A. Make appropriate arrangements for employees interviewing individuals with a known communicable disease.
- B. Take appropriate precautions when there is contact with a person who may have tuberculosis (TB). Employees with exposure or potential exposure to TB will be offered TB screening tests during working hours at no cost to the employees.
- C. Keep records of employees' exposure to active TB at the work site.
- D. Take appropriate precautions against the spread of infectious diseases. An employee, who reasonably believes that he or she has contracted a communicable disease, may file a claim for workers' compensation with the Department of Labor.
- E. Provide timely testing for employees who reasonably believe they were exposed in the course of their employment to a serious infectious disease. There will be no cost to the employees for leave, exam or treatment.

## **Section 27 – Pollution Prevention Strategy**

- A. The Department will maintain a current list of all hazardous materials in their respective sections/services and will be required to maintain and make available electronically (currently found at <http://vaww.ceosh.med.va.gov/ceosh/MSDS.shtml>) copies of current Safety Data Sheets (SDS).
- B. The Department will identify each employee using hazardous chemicals in the performance of his or her duties and ensure the employee is trained in the proper use of the chemical and able to identify the appropriate PPE.
- C. Assessments will be made for each of the hazardous chemicals and determine if there could be a less hazardous chemical which would fulfill the respective need.
- D. All chemicals or hazardous materials purchased shall require SDS with purchase.
- E. Employees will be retrained at least annually on the handling and disposal of each hazardous chemical in accordance with EPA, OSHA and DOT regulations.

- F. The professional Industrial Hygienist will perform a physical inventory each year and report to the facility Safety Committee on the compliance requirements, training needs of persons handling hazardous chemicals and disposals requirements.
- G. Types and quantities of hazardous waste generated at each health care facility and the methods used for disposal of each type of waste will be identified.
- H. The facility Green Environmental Management (GEMS) Committee will review methods used to dispose of hazardous waste for compliance with applicable criteria.
- I. All affected employees will be informed of each hazardous chemical they may have been exposed to and the risks associated with the hazardous chemicals as soon as the exposure is known.
- J. Monitoring is a proper subject for the Safety and Health Committee.

### **Section 28 – Health Screening Tests/Evaluations**

The Department agrees to provide health screenings consistent with law, government-wide regulations and Executive Orders.

### **Section 29 – Dissemination of Occupational Safety and Health Program Information**

- A. Any details of the Department's Occupational Safety, Health and Environment Program and applicable safety and health standards shall be made available upon request to employee representatives for review. A copy of any written program applying to the Department's Occupational Safety and Health Program should be provided to each committee member at the appropriate level.
- B. The Department shall post conspicuously in each establishment, and keep posted information for employees of the provisions of the Act and Executive Order 12196 in accordance with 29 CFR 1960.12. Additional specific procedures regarding placement of posters will be done consistent with Article 13 - National Consultation Rights and Mid-term Bargaining . Posters shall not be altered, defaced or covered by other material(s). If damaged or altered the Department will take responsibility for replacing them within 30 days.

### **Section 30 – Exposure to Radiation**

- A. In accordance with the National Health Physics Program (NHPP) guidance and standards, the Department shall take necessary preventive steps to protect employees from exposure to radiation.
- B. Employees in high risk areas will be provided devices to measure current and accumulated exposure levels. Employees will be alerted monthly to the employees' current and accumulated exposure level, and annually to the employees' accumulated exposure level.
- C. The Department will take additional steps necessary to prevent exposure if any employee is exposed to a level of radiation that is or could become a health or safety issue. Examples of known sources of possible exposure are security machines at points of entry, Imaging or X-

ray departments.

### **Section 31 – Laser Safety**

The Department will designate a qualified Department official who will be responsible to ensure compliance with applicable regulations and to provide safety training to the appropriate employees.

### **Section 32 – Ergonomic Lifting**

- A. The Department agrees that all employees are a most valued resource and shall be recognized as such.
- B. The Department agrees to provide employees with information concerning safe lifting. The Department further recognizes and agrees that this information must be appropriate to the specific work performed.
- C. Any lifting equipment must be selected based on operational and employee needs, physical environment, hazard assessment, injury analysis and Local input.
- D. The local Safety, Health and Environment Committee has the responsibility to review available equipment and solicit employee input regarding ergonomic lifting. This may be accomplished by the establishment of a sub-committee or workgroups, which will make recommendations to the local Safety, Health and Environment Committee. Time spent by Local officials serving on such committees or workgroups will be in accordance with Article 6 – Official Time.

### **Section 33 – References:**

Occupational Safety and Health Act of 1970  
Executive Order 12196  
29 CFR Part 1960  
VA Directive 7700  
VHA Handbook and Directive 7701 and 7701.1  
VA Directive 5810 (workers compensation)  
29 CFR 1904 (Occupational Safety and Health Administration (OSHA) Recordkeeping Provision for Federal Employees)  
Executive Order 13058  
5 USC 105  
Public Law 102-585  
VHA Directive 2008-052  
The Occupational Safety and Health Act (OSH Act)

## **ARTICLE 45 – OCCUPATIONAL HEALTH**

### **Section 1 – Purpose**

- A. The objectives and goals of the Department's Occupational Health Program are to provide for pre-placement and periodic physical examinations of employees, emergency outpatient and hospital treatment of employees, protection of employees from communicable

disease, maintenance of healthful working environment, and preventive health measures.

- B. The above provisions apply to all employees in the bargaining unit.
- C. The Department's Occupational Health Program will be administered consistent with law, government-wide regulation, this Agreement, and policy, specifically VA Handbook 5019 or its successor policy.

## **Section 2 – General**

- A. Consistent with Section 1, Occupational Health Program services will be limited to:
  - 1. Emergency diagnosis and first aid treatment of an injury or illness that becomes necessary during working hours and that are within the competency of the professional staff and facilities of the available occupational health service unit, whether or not such illness was caused by employment. Department officials need to ensure that a determination is made as to whether or not the employee is to be billed for the VA health care received. Local policy may define emergency treatment of non-work related conditions in tracking of infectious diseases among the employee population. In cases where necessary emergency treatment is not available onsite, the employee may be taken to his or her physician or suitable community medical facility if the employee requests it or is unable to request it.
  - 2. Pre-placement examinations of persons selected for appointment where required by applicable laws, VA policy, or the OPM instructions.
  - 3. In-service occupational examinations of employees as authorized in VA Handbook 5019 or to appraise and report work environment health hazards to management as an aid in preventing and controlling health risks.
  - 4. Administering, at the discretion of the responsible occupational health service unit physician or occupational healthcare provider, of treatments and medications.
    - a. Furnished by the employee and prescribed in writing by a personal physician as reasonably necessary to maintain the employee at work; or,
    - b. Prescribed by a physician providing medical care under 5 USC Chapter 81.
  - 5. Preventive services within the competence of the staff and facility resources to provide health education to encourage employees to maintain personal health; and to provide specific disease screening examinations and immunizations, as authorized in VA Handbook 5019 or determined by the head of the Department facility to be necessary.
  - 6. Referral, upon their request, of employees to community health resources that may be identified.
- B. Additionally, the Department will:
  - 1. Provide post-exposure examinations as mandated by applicable regulatory agencies.
  - 2. Provide medical surveillance for employees exposed to hazardous materials and

communicable diseases (such as asbestos or tuberculosis).

3. Cooperate with local public health agencies, physicians and programs in providing measures that protect against diseases of public health significance.
  4. If the contract for operation of a central health unit provides for an insufficient number of health maintenance examinations for all VA employees eligible for them, arrangements will be made for the examinations elsewhere, using VA medical facilities to the extent possible. The scope of any such examinations will be determined on VA criteria for such examinations.
- C. Upon request, the Department shall provide the local union a list of any classification or position that is required to be part of the medical surveillance program, including but not limited to the "fit-tested" for respirators program.
- D. Employees will be informed of any discrepancies or abnormalities shown in the evaluation; and, they will be encouraged to follow up with treatment or corrective action as soon as possible with their personal primary care provider.

### **Section 3 – Occupational Health Services**

- A. It is the policy of VA to provide an occupational health services program for all VA employees consistent with Section 2 above. The services of VA medical employees in hospitals and clinics will be utilized for this purpose to the extent feasible. The parties recognize that the head of a VA facility has the responsibility to arrange for the implementation of the occupational health services program for that facility.
- B. Where there are 300 or more federal employees working in one location and there are no existing health services, arrangements shall be made to establish a Department occupational health unit unless satisfactory occupational health services can be furnished by participation in a nearby occupational health unit serving other federal employees. For locations with fewer than 300 employees, occupational health services shall be provided by contract with private or public sources or by establishment of an occupational health service unit, whichever is deemed to be more feasible.
- C. Employees shall notify their supervisor when they seek treatment from an occupational health unit. When this is not feasible, they may report directly to the occupational health unit or person authorized to render emergency care. Facilities will have written procedures on how to address medical emergencies occurring to employees.
- D. The confidential nature of medical conditions shall be recognized and respected. Employee medical records maintained by the Department must be separately and distinctly secured from any other medical records.
- E. Procedures for disability retirement and OWCP are not part of the Occupational Health Program and are governed by Article 46 – Work Related Injury / Illness and other applicable authorities.
- F. When the Department provides treatment or performs an occupational evaluation, the individual providing such services will be performing within his or her scope of practice.

## **Section 4 – Treatment**

### **A. Nature and Extent of Non-Work Related Treatment:**

1. It is an expectation that all employees will have a private personal physician or healthcare provider.
2. If an employee suffers a minor illness or injury, which interferes with their ability to perform their duties, treatment may be rendered.
3. Treatment will be limited to relieve their discomfort and enable them to remain at work, and in an emergency, appropriate care to stabilize and transport the employee will be rendered.
4. If the installation has dental facilities, emergency treatment may be given for minor dental conditions.
5. These treatments are not intended to provide definitive medical or dental care or replace the employee's primary care provider.
6. The employee will be referred to their private physician or dentist for any necessary follow-up or definitive care.

B. When an employee suffers serious injury, needed first aid will be rendered and suitable transportation to an appropriate hospital, clinic, or physician's office arranged per employee consent as indicated. In the event transportation or hospitalization is required, the employee will be responsible for associated costs.

## **Section 5 – Temporarily Accommodations**

An employee who suffers a non-work related injury and is unable to perform the full range of duties in his or her position may request a temporary assignment to duties within medical restrictions. The Department will consider this request.

## **Section 6 – Pandemics**

- A. A pandemic is defined as an epidemic occurring over a very large geographic area. The Department will prepare and plan for a known pandemic and for potential pandemics when it becomes aware of them. Information regarding pandemic flu, including Department and outside resources can be found at the Department's [Pandemic Plan Website](#). The Department shall meet all bargaining obligations in accordance with Article 13 - National Consultation Rights and Mid-Term Bargaining in the development of the plan.
- B. During a pandemic event, the Department will issue required PPE for healthcare workers consistent with Center for Disease Control (CDC) and Occupational Safety and Health Administration (OSHA) requirements, as applicable.
- C. During a pandemic event, if the Department has a reasonable belief that an employee has been exposed to or contracted an illness related to the pandemic event, the Department may require the employee to leave the worksite without charge to leave. In such instances the employee must be available to return to duty upon request, unless the employee

requests to use sick or other leave.

- D. During a pandemic event, the Department may temporarily expand the use of telework to affected employees when appropriate and consistent with the 5 USC Chapter 65 and Article 18 - Telework.

### **Section 7 – Local Bargaining**

Additional procedures regarding occupational health topics not covered in VA Handbook 5019, or its successor policy, or this Article may be bargained locally.

## **ARTICLE 46 – WORK RELATED INJURY / ILLNESS**

### **Section 1 – General**

- A. The Office of Workers' Compensation Program (OWCP) is administered by the U.S. Department of Labor (DOL). An employee who suffers a work related injury or occupational illness should consult the Facility Workers Compensation Program Specialist and/or the DOL for guidance on applicable laws, DOL regulations, and precedents.
- B. An employee has the right to designate a union representative to assist with the process of filing an OWCP claim. The designated union representative can receive a copy of the completed form.

### **Section 2 – Employee Rights**

- A. The Department will inform an employee of their rights under the Federal Employees Compensation Act (FECA) when an employee sustains an injury, an alleged acquired illness or exposure during the performance of his or her duties. These rights include but are not limited to:
  - 1. The employee's right to file for compensation benefits;
  - 2. The types of benefits available;
  - 3. The written procedure for filing claims at each station or workplace;
  - 4. The option to use compensation benefits if approved in lieu of sick leave, annual leave, or leave without pay; and
  - 5. The option to use Continuation of Pay (COP) for traumatic injuries in lieu of sick or annual leave.
- B. When an employee has a complaint in reference to the Department's alleged mishandling of his or her Workers' Compensation claim, the Department will review and respond to those concerns. Additionally, the employee may contact the DOL.

### **Section 3 – Procedure for Filing Claims for Workers' Compensation Benefits**

- A. The Department shall post the Human Resources Management Service (HRMS) Workers Compensation Specialist office location, phone number, and email address in appropriate locations at the facility.
- B. The following publications are provided as information to assist employees in the filing of an OWCP claim:
  - 1. Publication CA-810: Injury Compensation For Federal Employees
  - 2. Publication CA-550: "Questions and Answers about Federal Employees Compensation Act (FECA)"
- C. The employee who sustains a job related injury or illness has the responsibility to inform their appropriate supervisor as soon as possible. If the employee is incapacitated, this action may be taken by someone acting on behalf of the employee.
- D. The Department shall, at that time, assure the employee is provided the proper forms and assist the employee in filling them out. The CA-16, CA-17, CA-7, and CA-20 must be in hard copy; for other forms, the employee will be permitted to choose whether to use electronic or paper forms.
- E. At the time the employee files a claim, the employee will be asked to designate whether he or she wishes a representative of the Union to be notified that the employee has filed a claim, and/or to receive a copy of the claim.
- F. The law provides that a claim for compensation must be filed within three years of the injury or death. Even if a claim is not filed within three years, however, compensation may still be allowed if written notice of injury was given within 30 days or the immediate supervisor had actual knowledge of the injury or death within 30 days after occurrence. This knowledge may consist of written records or verbal notification. An entry into an employee's medical record may also satisfy this requirement, if the data is sufficient to place the agency on notice of a possible work-related injury or illness.
- G. Employees and supervisors are responsible for filling out the appropriate forms and adhering to OWCP time frames.
- H. Employees will not be required by the Department officials to release medical records or personally identifiable information except in accordance with DOL requirements. The release of such information will assist the Department in its ability to find temporary placement consistent with the employee's limitations.
- I. All records relating to claims for benefits filed under FECA are covered by the government-wide Privacy Act system of records (DOL\Govt 1) (See 20 CFR 10.11). The Department will ensure the privacy, security and confidentiality of medical records. Notification and release will be consistent with Article 38 - Official Records.

#### **Section 4 – Election of Benefits Options**

- A. The DOL determines and makes all final decisions regarding claims for compensable injuries and benefits under (FECA). OWCP notifies the employee in writing when the claim has been received and a claim number is assigned.
- B. An employee with a job-related traumatic injury may elect to receive 45 days of COP if the claim is filed within 30 days of the injury. The entitlement to COP is not available to employees who file an occupational disease claim.
- C. Pending the approval of the compensation claim, an employee with a job-related traumatic injury or occupational disease may elect to be placed on sick or annual leave instead of leave without pay. If the employee's claim is approved, the employee shall have the option of buying back any paid leave used and having it reinstated to the employee's account.
- D. If the employee's claim for compensation is disallowed by the DOL, OWCP, any of the 45 days of COP that were previously granted will be converted to sick leave and annual leave. The employee shall be responsible for advising the Department as to which form(s) of leave is/are requested and for completing an SF-71, Application for Leave, or its electronic equivalent.

#### **Section 5 – Placement of Workers' Compensation Claimants**

- A. This section only applies to instances involving traumatic on the job injuries.
- B. When an employee requests and supports his or her request with appropriate medical information, the Department will make a serious effort to assign the employee on a temporary basis to duties consistent with the employee's medical needs, pending resolution of his or her claim.
- C. Transitional (light) duty assignments will be consistent with the employee's qualifications and medical limitations. Light duty assignments must be in writing, of limited duration, and not to be considered indefinite or permanent in nature. With an approved claim transitional (light) duty may also include reduced hours or changing the employee's scheduled tour of duty without loss of pay.

#### **Section 6 – Telework**

Consistent with Article 18 - Telework, the Department will consider the use of Telework for employees receiving OWCP benefits when appropriate and feasible.

#### **Section 7 – Automated Safety Incident Surveillance and Tracking System (ASISTS) or Successor Program**

- A. The Department will adhere to VHA Directive 2011-020 or successor policy.
- B. The Department agrees to inform employees of their rights and responsibilities under FECA at the time that an employee reports an injury or illness thought to be work related.
- C. Consistent with VA policy, an employee has:

1. the initial right to select a provider or physician of his or her choice to provide necessary treatment. The VA facility may be available for examination and treatment, but an employee is not required to use the VA facility. The employee has a choice to seek other medical care;
  2. the right to apply for compensation using the forms required by the DOL; and
  3. the right to Union representation at any time during the OWCP process. It is the employee responsibility to contact the local Union for assistance.
- D. The Union will have access to the ASISTS or successor program for tracking injuries at all facilities with bargaining unit employees. The following information will be accessible to the Union/Local subject to any permissions or redactions required by law, government-wide regulation and VA policy:
1. Ability to print the 2162 form after completion by supervisor and safety officer;
  2. Electronic mail notification of accident report recorded in ASISTS after stub is created;
  3. Electronic mail message that employee has initiated CA-1 or CA-2;
  4. Electronic mail message that Safety Officer has completed CA-1 or CA-2;
  5. Ability to print accident report status;
  6. Access to OSHA 300 logs of incidents;
  7. Needlestick logs; and
  8. National representatives will have access to all data by VISN/Facility to track and trend, Injuries by facility or VISN. Access to VSSC WC Data cube with current data.

### **Section 8 – FECA Definitions Provided for Informational Purposes Only**

- A. CA-1 is the appropriate form for reporting a traumatic injury. A traumatic injury is a wound or other condition of the body caused by external force, including stress or strain. The injury must be identifiable by time and place of occurrence and member of the body affected; it must be caused by a specific event or incident or series of events or incidents within a single day or work shift. A traumatic injury also includes damage to or destruction of prosthetic devices or appliances.
- B. CA-2 is the appropriate form for reporting an occupational disease or illness. An occupational disease is defined as a condition produced in the work environment over a period longer than one workday or shift. It may result from systemic infection, repeated stress or strain, exposure to toxins, poisons, or fumes, or other continuing conditions of the work.
- C. CA-2A is the appropriate form for recording a recurrence of disability. A recurrence of disability is defined as a spontaneous return or increase of disability due to a previous injury or occupational disease without intervening cause or a return or increase of disability due to

a consequential injury (defined as one which occurs due to weakness or impairment caused by a work related injury).

- D. CA-16 authorizes an injured employee to obtain immediate examination and/or treatment from a physician for an on-the-job injury. An employee has the initial right to select a physician of his or her choice to provide necessary treatment. The physician must be listed by name on the CA-16. The term 'physician' includes doctors of medicine (MD), surgeons, osteopathic practitioners, podiatrists, dentists, clinical psychologists, optometrists, and chiropractors within the scope of their practice as defined by state law. Whenever possible, the employee will be provided CA-16 (Authorization for Examination and/or Treatment) within four hours after requesting the CA-16. When it is not possible, the Department will authorize medical treatment by telephone and send the completed form to the medical facility within 48 hours. The Department will provide the employee with information about accessing DOL's online medical provider search tool and will assist the employee in obtaining the list. The fact that a provider is listed in no way constitutes an endorsement of the provider, or the provider's services, by the Department.
- E. CA-17 is the form used to report the duty status of the employee. The applicable Department official must fill out the left hand portion of the form describing the physical requirements of the position. The physician or practitioner completes the CA-17, Duty Status Report, as appropriate, to provide information such as the date the employee can return to work or any restrictions on work the employee will be able to perform.
- F. CA-7 is the form used to claim compensation (wage loss) when the employee cannot return to work after Continuation of Pay (COP) ends, or when the employee is not entitled to receive COP, and claims compensation for wage loss. CA-7 is filed in occupational exposure or recurrence cases. In controverted cases, where pay is terminated, form CA-7 is submitted with form CA-1. CA-7 is also used to claim a schedule award for permanent impairment as a result of traumatic injury.
- G. CA-20 is a Medical Report Form. This report may be made on CA-20, which is a form attached to CA-7. The Department will provide form CA-20 to the employee as often as needed.

## **ARTICLE 47 – VA DRUG FREE WORKPLACE PROGRAM**

### **Section 1 – General**

- A. The Department agrees that its Drug Free Workplace Program will be administered in accordance with Executive Order (EO) 12564, the Department of Health and Human Services (HHS) Mandatory Guidelines for Federal Workplace Testing Programs, the VA Handbook 5383 and any subsequent changes thereto, other laws, rules and Government-wide regulations. For the purposes of this agreement, the terms "rules and regulations" shall mean those rules and regulations of authorities outside the Department, such as the Office of Personnel Management and HHS. The Parties agree that the testing referred to by the term "drug test" means "urinalysis."
- B. The Department shall not implement any subsequent proposed changes to these procedures that impact bargaining unit employees without first fulfilling its labor obligations at either the national level or local level, as appropriate, consistent with Article 13 - National

Consultation Rights and Mid-Term Bargaining. By entering into this agreement, the Parties recognize that the Union is not authorized to waive, and does not waive, any legal challenge or Constitutional or legal rights employees may have regarding any facet of drug testing.

- C. A fundamental purpose of the VA's drug testing program is to ensure the VA patients are treated safely. The drug testing program was also established to assist employees who themselves are seeking treatment for drug use. For this reason, the VA will not initiate disciplinary action against any employee who meets all three of the following "safe harbor" conditions:
  - 1. Voluntarily identifies him or herself as a user of illegal drugs prior to being identified through other means;
  - 2. Obtains counseling or rehabilitation through an Employee Assistance Program; and
  - 3. Thereafter refrains from using illegal drugs.
- D. Removal action will be initiated against an employee who is found to use illegal drugs and who refuses to obtain and successfully complete an appropriate counseling or rehabilitation program.
- E. Additionally, disciplinary action, up to and including removal, will be initiated against any employee occupying a position subject to random drug testing and who refuses to be tested.
- F. The provisions of this Article are intended to apply only to drug tests conducted under the Drug Free Workplace Program and to be interpreted consistently with applicable government-wide regulations.

## **Section 2 – Employees Subject To Testing**

- A. Testing will be conducted in accordance with applicable laws, rules, and regulations. EO 12564 provides for the following types of drug testing:
  - 1. Random testing for the use of illegal drugs by employees in sensitive positions;
  - 2. Voluntary employee drug testing;
  - 3. Reasonable suspicion testing;
  - 4. Injury, illness, unsafe, or unhealthful practice testing;
  - 5. Follow-up to counseling or rehabilitation for illegal drug use through the EAP;
  - 6. Applicant testing.

## **Section 3 – Positions Designated as Sensitive**

- A. The designation of sensitive positions will be done in accordance with applicable laws, rules and regulations. EO 12564 states "the head of each Executive Agency shall establish a program to test for the use of illegal drugs by employees in sensitive positions. The extent to which such employees are tested and the criteria for such testing shall be determined by the

head of each [Executive] agency, based upon the nature of the agency's mission and its employees' duties, the efficient use of agency resources, and the danger to public health and safety or national security that could result from the failure of an employee to adequately discharge his or her position."

- B. As changes are made, the local VA facility will provide the appropriate Local President with a copy of changes to the list of testing designated positions.

#### **Section 4 – Reasonable Suspicion Testing**

- A. Consistent with EO 12564, VA Handbook 5383, and applicable government-wide regulations, reasonable suspicion testing may be required of any employee in any position which is designated for random testing when there is a reasonable suspicion that the employee uses illegal drugs whether on or off duty. Reasonable suspicion testing may also be required of any employee in any position when there is a reasonable suspicion of on-duty use or on-duty impairment. A reasonable suspicion of drug use or impairment may be based upon, among other things:
  - 1. Observable phenomena, such as direct observation of drug use or possession or the physical symptoms of being under the influence of a drug;
  - 2. A pattern of abnormal conduct or erratic behavior in the workplace setting indicative of illegal drug use;
  - 3. Arrest or conviction for a drug related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, or use or trafficking;
  - 4. Written information provided either by reliable and credible source or by an independently corroborated source; or
  - 5. Newly discovered evidence that the employee has tampered with a previous drug test.
- B. The decision to test an employee based upon reasonable suspicion of drug use requires review by a higher-level supervisor. The higher-level supervisor shall advise the supervisor in writing of concurrence or rejection of the decision in advance of the drug test. Furthermore, the supervisor must document in writing all reasons for claiming reasonable suspicion prior to ordering the employee to take the drug test. This includes documentation of information addressed in paragraph 4A above.

#### **Section 5 – Injury, Illness, Unsafe, or Unhealthful Practice Testing**

- A. VA is committed to providing a safe and secure work environment. It also has a legitimate interest in determining the cause of serious accidents so that it can take appropriate corrective measures. Post-accident drug testing can provide invaluable information in furtherance of that interest. Accordingly, employees may be subject to testing when, based upon the circumstances of the accident, their actions are reasonably suspected of having caused or contributed to an accident that meets the following criteria:
  - 1. The accident results in a death or personal injury requiring immediate hospitalization; or

2. The accident results in damage to government or private property estimated to be in excess of \$10,000.
- B. If an employee is suspected of having caused or contributed to an accident meeting the above criteria, an appropriate management official will present the facts leading to this decision to the facility Director or designee for approval. Once approval has been obtained and arrangement made for testing, the appropriate Department official will prepare a written report detailing the facts and circumstances that warranted the testing.

## **Section 6 – Volunteer Testing**

Employees will not be coerced or required to participate in voluntary testing established under section 3(b) of EO 12564. Participation or non-participation in voluntary testing will neither advantage nor disadvantage employees in any aspect of their employment except as otherwise agreed to in a settlement or last chance agreement. To the extent that random testing may be conducted on volunteers, it must be conducted in accordance with applicable laws, rules and regulations.

## **Section 7 – Notification to Employees**

- A. The Department, on an annual basis, at the facility level, will provide an annual reminder regarding the VA's Drug Free Workplace Plan. In the annual reminder, the Department will provide to employees a link regarding the VA's Drug Free Workplace Plan, contained in VA Handbook and Directive 5383. The link can be currently found at <http://vawww.va.gov/OHRM/Directives-Handbooks/Documents/5383.pdf>. Additionally, classes will be made available on the VA's Talent Management System (TMS). If requested will provide time on duty to an employee to take TMS training on topics related to VA's Drug Free Workplace Plan or to review the link. All employees are encouraged to seek information on such topics as:
1. Participation and particulars of the program;
  2. The consequences of a positive test result;
  3. Information about the testing procedures, quality assurance and confidentiality; and
  4. The availability of drug abuse counseling and referral services, including the name and telephone number of the local EAP Counselor(s).
- B. This section does not impact upon any individual responsibility of an employee to follow the law or VA policy regarding VA's drug free workplace.
- C. The Department will provide the name and number of the Department official designated as the point of contact for employees seeking information regarding the Drug Free Workplace Program Plan.
- D. Upon being hired or converted to a testing designated position, as well as when a position is changed to a tested designated position, the Department will inform the employee of the testing requirement. In the instance when the changing a position from a non-designated to a testing designated position triggers a duty to bargain under the Statute, the Department

will meet its bargaining obligations, consistent with Article 13 - National Consultation Rights and Mid-Term Bargaining.

- E. On the day of drug testing, the employee to be tested shall receive in writing the information set forth below. If the testing is to take place at a location other than the employee's duty station, the information shall be provided the employee prior to leaving the duty station. Otherwise the information shall be given to the employee prior to the scheduled collection time. Inadvertent failure to provide this information will not invalidate the results of an employee's drug test.
  - 1. Whether the test is voluntary or mandatory;
  - 2. The reasons for ordering the drug test;
  - 3. How the employee was selected for the test;
  - 4. The consequences of a positive result or refusal to cooperate, including adverse actions;
  - 5. What drugs or class of drugs they are being tested for;
  - 6. The Medical Review Officer (MRO) process as set forth by HHS guidelines, including the procedures relating to the submission of information to justify a positive result caused by prescription medication, non-prescription medication or other substance;
  - 7. The location of drug abuse counseling and referral services available through the Employee Assistance Program to which he or she can submit prior to testing. (However, the test will not be delayed to allow the employee to seek assistance);
  - 8. The fact that the employee has a right to Union representation only as provided in the Master Agreement; and
  - 9. The consequences should they refuse counseling or rehabilitation.

#### **Section 8 – Methods and Procedures for Testing**

- A. The Parties agree that methods and equipment used to test for abuse of drugs yield the best results when the most reliable laboratories are used. Therefore, the Department will agree to review the Federal Register to ensure that its contractor remains an HHS-certified laboratory. In the event that the contractor is decertified in accordance with HHS guidelines, the Department will cease any further testing at the decertified laboratory. The Department will also cease further collections until an HHS-certified laboratory is available to accept employee specimens.
- B. The following procedures will be utilized subject to law, rules and regulations, to ensure drug testing is reliable and employee concerns are recognized:
  - 1. The collection, handling and transportation of all specimens will be conducted strictly in accordance with HHS Chain of Custody Procedures, other HHS requirements, and any other pertinent laboratory requirements.

2. The individual may provide his or her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy in accordance with HHS guidelines. VA will make every reasonable effort to ensure that the specimen will be provided in a sanitary area.
3. The urine sample will be split at the time of collection and in accordance with procedure, will be transmitted to the Department contractor with the primary specimen for storage in accordance with Chain of Custody Procedures. The split sample will be retained in an appropriate, refrigerated, and secure storage facility in accordance with HHS guidelines for a period of no longer than 15 days. The cost of conducting the split sample, the materials, postage, and storage costs are the responsibility of the Department.
  - a. Upon notification of a positive confirmatory test from the Department contractor, the MRO will notify the employee and he or she will have the opportunity to provide any/all relevant information that will assist the MRO in determining whether the positive test result is justified. At the employee's request, the MRO will request the split specimen be tested at an HHS-certified laboratory for the presence of drug(s) for which a positive result was obtained in the test of the primary specimen. The employee shall select a laboratory from a list of three HHS-certified laboratories. The Department will make the list available to the employee.
  - b. This confirmatory test will be conducted in accordance with HHS Guidelines regarding "Retesting of Specimens" and will not utilize cutoff levels. The cost of the confirmatory test will be borne by the Department. The MRO shall honor such a request if it is made within 72 hours of the employee having received notice that he or she tested positive.
  - c. Should the employee-requested confirmatory test conducted by the second HHS-certified laboratory (utilizing the split sample) refute the original test, the original test will be negated.
4. If a sufficient volume of urine is not available to be provided in a reasonable period of time in accordance with HHS Guidelines, the collection site person will contact an appropriate authority within the Department. Normally, "a reasonable period of time" should not extend beyond the employee's scheduled workday. Consideration will be given to re-scheduling the employee for testing at a later date.
5. The Department will conduct in-house collection of all urine specimens. The Department agrees to monitor the collection process to assure compliance with applicable HHS Guidelines.
6. Employees will not be required to reveal legitimate use of legal or prescription drugs at the time of collection. Employees may, however, provide this information if they so desire. This information is confidential and will only be released to the MRO.
7. Any employee who tests positive will be afforded an opportunity to justify the test results in accordance with HHS Guidelines, including the opportunity to present evidence of the legitimate use of prescription medication, non-prescription medication or other substance.

8. If the test is positive and the employee provides evidence that the Department concludes demonstrates a disabling drug dependency, the Department will provide any appropriate reasonable accommodations in accordance with applicable laws, rules and regulations. Follow-up testing conducted on employees who successfully complete a rehabilitation program will comply with applicable laws, rules and regulations.
9. Upon receipt of a positive test result resulting from the gas chromatography/mass spectrometry confirmatory test conducted by the HHS-certified laboratory, the MRO, in accordance with HHS Guidelines, will examine alternate medical explanations for the test results. If the MRO concludes that the employee's medical documentation does not provide a legitimate medical explanation for the positive test result, the MRO must explain the basis for his/her rejection of the documentation in writing for the benefit of the employee. If the MRO determines that there is a legitimate medical explanation for the positive test result, he/she will determine that the result is consistent with legal drug use and will take no further action. The test result reported back to the Department would be "negative."
10. When requesting that collection times be scheduled for drug testing under Reasonable Suspicion testing and Injury, Illness, Unsafe or Unhealthful Practice Testing, where appropriate, the Authorizing Management Official will take into consideration leave and travel plans which have been scheduled and approved by the employees' supervisor. In the event that management cancels leave or travel orders to conduct a drug test, it shall reimburse the employee for any loss of funds, including but not limited to, airline tickets and hotel reservations, caused by the cancellation of the approved leave.

## **Section 9 – Confidentiality and Safeguarding of Information**

- A. The Parties recognize the responsibility to protect the confidentiality of employees under any drug-testing plan. The Department will use a serialized system of numbers assigned to employees to identify the specimen to the Department contractor for testing. The process shall include the following:
  1. The collection, handling and transportation of all specimens will be strictly in accordance with HHS Chain of Custody Procedures and other HHS requirements. Confidentiality and safeguarding of information will be handled in accordance with Section 8.B1.
  2. Employees will be assured confidentiality in all matters relating to drug testing. Information will only be released in accordance with law, rule or regulation.
  3. The Department shall destroy all Department records concerning non-confirmed or justified test results as required by laws, rules, or regulations.
  4. In accordance with all applicable laws, rules, regulations, guidelines and subsequent changes thereto, the employee who was subject to a drug test will receive copies of all records relating to his or her drug test within the control of the Department.
  5. In the event of evidence or allegation of a breach of confidentiality, the Department will promptly investigate such evidence or allegation and take appropriate corrective action, which may include disciplinary action, against the individual responsible for such breach of confidentiality. The Department shall make a good faith effort to complete the investigation within 60 days of learning of the alleged breach of confidentiality. It shall

provide the employee a written report and all information upon which the report is based within three days of the completion of the investigation report. Under no circumstances shall the alleged responsible individual participate in the investigation, except to provide testimony or evidence in support of his or her version of events.

### **Section 10 – Counseling and Rehabilitation**

- A. Employees whose tests have been confirmed positive will be referred to an Employee Assistance Program Counselor for counseling and/or referral assistance for appropriate treatment and rehabilitation.
- B. Counseling and referral to rehabilitation services will be offered to employees and their families with substance abuse problems, and also to employees who have family members with substance abuse problems.
- C. After successful completion of rehabilitation, the Department will seriously consider returning the employee to the same or similar position as the one occupied before the drug problem was identified. In the event that the Department initiates discipline, it will do so consistent with any applicable laws, regulations and the VA policies related to employee drug use, including but not limited to the VA Handbook 5383 as well as this Agreement, specifically Article 37 - Discipline and Adverse Actions.

### **Section 11 – Acknowledgement Forms**

No employee shall be required to sign any document stating that he or she agrees with a drug-testing program. This does not preclude an employee's agreement to submit to drug testing as part of a settlement or last chance agreement. Employees' signatures on any acknowledgement documents will merely signify notice of the terms of the document.

### **Section 12 – Employee Rights**

- A. Employees may appeal disputes or conflicts regarding the application of the policies and procedures of the VA's Drug Free Workplace Plan in any appropriate forum.
- B. Any travel and/or per diem required in connection with drug testing will be provided by the Department in accordance with Federal Travel Regulations and the VA's current travel policy.
- C. Employees subject to drug testing will not be charged leave for the time necessary to provide the required sample or to meet with the MRO, if necessary.

### **Section 13 – Union Rights**

- A. Upon request, the Department shall timely provide the union copies of all statistical data pertaining to drug testing, sanitized copies of reasonable suspicion determination notices to employees, and pertinent parts of its annual report to HHS/Congress which pertains to the Drug Free Workplace Program. The reasonable suspicion notice to the employee will be sanitized to guarantee total anonymity to the employee.

- B. If the local NAGE president has a concern regarding the designation of the MRO or any aspect of the VA Drug Free Workplace Program, he or she may bring these concerns to the attention of the facility Director/Chief Executive Officer.
- C. When an employee requests union representation regarding issues in this article, such representational work is a proper use of official time, consistent with Article 6 - Official Time.

## **ARTICLE 48 – MONITORING OF EMPLOYEES**

### **Section 1 – Silent Monitoring**

- A. Silent monitoring is defined as the practice of a supervisor listening in on a call or a recording of a call between an employee and a third party to evaluate the employee's duties and responsibilities and related conduct.
- B. The Department may utilize silent monitoring of employees for purposes related to conduct and performance and not to harass employees. This monitoring will also be used to ensure that complete and accurate information is courteously provided to the calling public and to determine training requirements.
- C. Employees will be notified annually if they occupy a position subject to silent monitoring. After receipt of such notification, employees will be afforded the opportunity to discuss with their supervisors the practice of silent monitoring of their position.
- D. Additionally, the Department will provide to the local union the annual notification of positions subject to silent monitoring.
- E. Information obtained during silent monitoring may be used to evaluate performance and to support a personnel action, consistent with applicable law, government-wide regulation, VA policy and this Agreement.
  - 1. In matters involving the evaluation of employee performance, the supervisor will discuss with the employee the concerns reflected in the data consistent with Article 22 - Performance Appraisal. In the case of a recorded contact, the employee may listen to the recording and make a written response regarding the Department's assessment of the contact.
  - 2. In matters involving discipline, any evidence derived from monitoring shall be part of the evidence file, in a manner not prohibited by law, rule or regulation.

### **Section 2**

Except where required for a criminal investigation or an internal security matter, the Department shall not record or monitor telephone conversations of the Local union offices.

### **Section 3 – Bargaining Obligations**

Where a duty to bargain is triggered under the Statute regarding any new or changed silent monitoring programs, the Union will be notified in advance and be given the opportunity to

bargain as appropriate, consistent with Article 13 - National Consultation Rights and Mid-term Bargaining.

## **ARTICLE 49 – SURVEILLANCE**

- A. The Parties recognize that surveillance is conducted for safety and internal security reasons.
- B. If the Department uses "covert" or "hidden" electronic camera surveillance during an investigation, the following shall apply if a disciplinary, adverse or major adverse action is proposed against an employee represented by the Union:
  - 1. The Union will be given a copy of all relevant evidence collected;
  - 2. The Union will be provided a copy of the pertinent video tapes or other applicable media format; and,
  - 3. The Union will be allowed to represent affected employees in any subsequent discussions or proceedings involving them.
- C. Where a duty to bargain is triggered under the Statute, the Union will be notified in advance of any new or changed surveillance programs and be given the opportunity to bargain as appropriate, consistent with Article 13 - National Consultation Rights and Mid-Term Bargaining.

## **ARTICLE 50 – EMPLOYEE ASSISTANCE**

### **Section 1 – General**

- A. The Department agrees to maintain the VA Employee Assistance Program (VAEAP), which is a program for individuals having emotional or personal issues that may affect job performance and/or conduct. Examples of issues for which EAP may be appropriate include but are not limited to: emotional and mental distress, family discord, marital counseling, substance abuse, financial stressors. This list is not meant to be all encompassing, as other issues may be covered.
- B. Information on the VAEAP will be available electronically and posted on bulletin boards. Updates and changes on the VAEAP will be distributed as changes are made. Information on the VAEAP will also be made available after catastrophic events affecting employees.
- C. Employees are encouraged to consult the Office of Personnel Management's website <http://www.opm.gov/> OPM EAP Fact Sheet, for further information about the scope of assistance available through EAP and the rules and regulations pertinent to the program.

### **Section 2 – Participation**

- A. The Department will assure that no employee will have job security or promotion opportunities jeopardized by a request for counseling, referral or assistance through VAEAP.

- B. No employee will be required to participate or be penalized for merely declining referral to counseling services.
- C. When the Department changes the VAEAP and a duty to bargain is triggered under the Statute, the Union will be given notice and an opportunity to bargain consistent with Article 13 - National Consultation Rights and Mid-Term Bargaining. Additionally, specific procedures regarding the VAEAP not covered in this Article may be negotiated by the local parties consistent with Article 13 - National Consultation Rights and Mid-Term Bargaining.

### **Section 3 – Confidentiality**

All records will be maintained and preserved in accordance with applicable laws and regulations and Article 38 - Official Records. The Parties may not obtain information about the substance of the employee's involvement with a counseling program without an employee's specific written consent. An employee may release limited or selected information of his or her participation instead of a full release of all information regarding participation in VAEAP.

### **Section 4 – Excused Absence**

Employees undergoing counseling under the VAEAP will be excused without charge to leave for a brief period of time of less than one hour for each counseling session up to a maximum of eight total hours. The use of this excused absence is subject to coordination for release from the supervisor.

### **Section 5 – Leave Associated with VAEAP**

It is the policy of the Department to grant leave (sick, annual, or LWOP) for the purpose of treatment or rehabilitation of employees under the VAEAP in a manner similar to that granted for employees with any other health problem and consistent with law, government-wide regulation, VA policy and this contract.

## **ARTICLE 51 – STAFF LOUNGES & LOCKERS**

### **Section 1**

Recognizing that the health and well-being of employees are necessary to the successful accomplishment of the Department's mission, local management will provide staff lounges, (alternatively called break rooms) or other similar space and lockers or other similar storage space for employee use.

### **Section 2**

Staff lounges and lockers shall be reasonably accessible to the employees' work areas.

### **Section 3**

The staff lounge should be of sufficient size to accommodate the number of employees reasonably expected to use the space at any given time. Recognizing that surveillance should

be done only for safety and internal security reasons, any surveillance of staff lounges will be consistent with Article 49 - Surveillance.

#### **Section 4**

- A. Any local agreements and/or past practices in effect when this Agreement is signed shall remain in effect, until and unless changed through local bargaining consistent with this Agreement.
- B. When the Department changes working conditions regarding staff lounges or other similar space and lockers or other similar storage space and a duty to bargain is triggered under the Statute, the Union will be given notice and an opportunity to bargain consistent with Article 13 - National Consultation Rights and Mid-Term Bargaining. Additionally, specific procedures regarding staff lounges or other similar space and lockers or other similar storage space not covered in this Article may be negotiated by the local parties consistent with Article 13 - National Consultation Rights and Mid-Term Bargaining. Such bargaining topics may include but are not limited to, arrangements in facilities where there is insufficient space for dedicated staff lounges or lockers as well as access to microwaves, refrigerators, storage, coffee pots, and furniture consistent with law, government-wide regulations and VA policy, specifically with respect to the authorized use of appropriated funds.

### **ARTICLE 52 – CHILD CARE AND OTHER DEPENDENT CARE**

#### **Section 1 – Policy and Purpose**

The Parties recognize that working parents may have special child care needs during working hours. The Parties recognize the need for such parents to secure appropriate child care arrangements. The Department will continue its efforts to secure adequate funding in order to support and foster child care services for its employees.

#### **Section 2 – Child Care Activities**

- A. The Department will continue to provide and/or support various activities in order to meet ongoing child care needs. These may include, but are not limited to, such things as child care and parenting information, child care resource and referral information, workshops, and counseling as available through the Employee Assistance Program. Upon request, the Department will provide employees with the name and contact information of someone to speak with regarding information in this section.
- B. It is the Department's intention to utilize available funds nationwide to foster local solutions to child care needs. These may include construction of on-site facilities or near site facilities, participation in shared facilities with other Federal agencies, establishment of mini-centers, or other child care services.
- C. In accordance with Federal Law and government wide regulations, the Department agrees to pay legally permissible expenses for training, conferences, or other meetings for child care employees. These training sessions, conferences and other meetings will be determined by the Department as necessary for child care employees and in connection with the provisions of child care services. The Department also agrees to pay similar expenses for Department employees who have oversight responsibilities for the operation of

child care facilities, e.g., members of local Child Care Committees and Boards of Directors, if it is determined by the Department that such training is relevant and necessary.

- D. The Director, or appropriate designee, of each facility will provide inquiring employees with current listings of the qualified, licensed child care centers in the immediate area. Recognizing that a broad range of child care needs exists in compiling such listings, Department will request specific information, e.g., age groups served, types of programs offered, and special needs program. Under Federal Law, the Department is prohibited from ranking, endorsing, or promoting agencies or organizations listed in the Child Care Resources Handbook.

### **Section 3 – Local Child Care Committees**

- A. When a site for a VA Child Care Center is selected, the Parties will establish a local committee comprised of one Department representative, one Local representative (on official time consistent with Article 6 - Official Time), parents, and other parties as appropriate will be a member of any such committee. The Department will have subject matter experts available to meet with the committee on an as needed basis. The committee will guide development of the local child care program, including development of marketing strategies, operating procedures, and admission priorities.
- B. The committee will have the opportunity to review and make recommendations which will be considered in the design of the facility. The committee will participate in the selection of the child care provider.
- C. In accordance with laws, rules, and regulations, once the center becomes operational, the committee will be replaced by a Board of Directors which the committee will assist in establishing. The Local will designate one representative to serve on the Board of Directors on official time (consistent with Article 6 - Official Time).
- D. Bargaining unit employees serving in a non-representational capacity will be on duty time when involved with child care committee/board meetings or assignments.

### **Section 4 – Employee Needs**

- A. A request for leave to deal with unexpected changes in child and dependent care arrangements will be considered consistent with Article 17 - Time and Leave.
- B. The Department agrees to utilize options available in and consistent with this Agreement as well as those available to federal employees outside this Agreement as flexible alternatives to those employees with dependent care needs.
- C. The Department recognizes that it may be necessary for employees to contact child and dependent care providers during duty hours.
- D. Employees requiring assistance involving dependent care may contact the Employee Assistance Program consistent with Article 50 - Employee Assistance.

### **Section 5 – Facilities**

If a child care facility is established, it will be governed by appropriate Federal Laws and government-wide regulations.

### **Section 6 – Miscellaneous**

The Parties agree that this Article will not delay or impact on any pending child care initiatives. The Local will be kept informed of the child care initiatives.

### **Section 7 – Elderly Care and Other Dependent Activities**

- A. The Parties recognize that dependent care for other than children is an emerging issue and encourage exploring solutions as issues arise in this area.
- B. The Parties further recognize that employees may have dependent care needs, other than child care, that arise during working hours and recognize the need for employees to make appropriate dependent care arrangements.
- C. In the event that the Department creates a local committee designed to address dependent care issues other than child care the Union may appoint a representative on the committee. The Union does not waive any bargaining rights regarding non-child related dependent care. In the event that a new Federal Law is enacted regarding non-child related dependent care, the Department will meet its bargaining obligations consistent with Article 13 - National Consultation Rights and Mid-Term Bargaining.

## **ARTICLE 53 – PARKING AND TRANSPORTATION**

### **Section 1 – Local Negotiations**

Parking is a substantive subject for local supplemental negotiations to the extent not specifically covered in this Agreement consistent with Article 13 - National Consultation and Mid-term Bargaining. Each facility shall provide at least one parking space, in a clearly marked location convenient to the Union and reserved for 24 hours per day, for the use of each Local. The specific location of the reserved space may be based on valid patient care needs at the facility.

### **Section 2 – General**

Where employees are not being charged for available parking upon the effective date of this Agreement, no charge will be initiated for existing parking spaces for the duration of this Agreement, except when required by law. In the event that the Department makes a change regarding employee parking that triggers a duty to bargain, it will provide notice and bargain consistent with Article 13 - National Consultation Rights and Mid-term Bargaining. Prior to bargaining, the Department will engage in pre-decisional involvement consistent with Article 11 - Labor-Management Cooperation.

### **Section 3 – Relocation**

The Department agrees that if they relocate an office or should circumstances prompt changes in lease agreements, prior to the “solicitation for offers,” the Department will notify the local union and engage in pre-decisional involvement consistent with Article 11 - Labor-Management

Cooperation and where the change has triggered a duty to bargain, bargaining will occur in accordance with Article 13 - National Consultation Rights and Mid-term Bargaining.

#### **Section 4 – Violations**

An employee may receive two courtesy warnings and one counseling prior to receiving a parking citation by Department police, except where a vehicle is parked in clearly marked emergency lanes or reserved parking spaces. All citations issued will be reviewed by the Director or designee who may make a recommendation to the Federal/city court. The citation or parking warnings will be purged in accordance with the Federal Records Control Schedule.

#### **Section 5 – Shuttle Service**

The Department may provide existing or future shuttle service on a space available, first come, first served basis for employee use. In the instance of shuttle service that is jointly provided to staff and patients, the latter will be given priority for access and the Department will ensure staff will be picked up. Changes in the shuttle service used by employees that triggers a duty to bargain under the Statute will be negotiated consistent with Article 13 - National Consultation Rights and Mid-term Bargaining.

#### **Section 6 – Security**

In Department-owned parking facilities, it is the responsibility of the Department to provide a safe and secure parking area for its employees including, but not limited, to the following:

- A. Lighting - Adequate lighting in all parking areas throughout the facility;
- B. Security Service - For employee safety, VA police will provide escort service, when available and if requested, to parking areas under Department jurisdiction;
- C. Inspections - Safety and sanitary inspections of grounds including facility and parking areas are to be regularly scheduled;
- D. Pedestrian Crosswalks - Crosswalk areas from parking area to facility will be clearly marked; and,
- E. Signage - Clearly understandable and unobstructed signs (traffic, pedestrian, etc.) consistent with both General Services Administration (GSA) standards and guidelines and safety traffic engineering principles are to be provided.

#### **Section 7 – Commute Options**

- A. The Parties agree to explore alternative commuting options and to encourage their use.
- B. The Department will make appropriate arrangements for employees to advertise ride-sharing opportunities.
- C. Where possible, the Department will work with public transportation agencies to address the availability of public transportation to the facility.

#### **Section 8 – Transit Subsidies**

- A. Transit subsidies are designed to encourage employees to use mass transportation in commuting to reduce air pollution, noise, and traffic congestion in metropolitan areas.
- B. Consistent with law, regulations and VA Directive 0633, or successor document, qualified employees shall receive a subsidy in the form of transit vouchers or electronic equivalent for purchase of “fare media” or reimbursement that must be used toward public transportation commuting costs.

## **ARTICLE 54 – UNIFORMS**

### **Section 1 – General**

- A. In keeping with the Department’s mission, the Parties recognize the importance of employee appearance. The purpose of this Article is to ensure safe and appropriate uniforms for an employee’s work environment, to enhance employee and public pride while projecting a positive image of the organization and to ensure a clear, procedure and process for issuance of uniforms or allowance, in accordance with law, regulations, VA policies, and this Agreement. Employees uniform’s will be clean and well-kept.
- B. Uniforms for all employees, except Department police officers are authorized in accordance with 5 USC 5901, 5 USC 5903, 5 CFR 591.101 through 104 and any other implementing government-wide regulations. Uniforms for National Cemetery Administration (NCA) employees are covered in NCA Handbook 3012. Additional information regarding firefighters can be found below in Section 3. Specific procedures for furnishing and servicing employee uniforms will be consistent with VHA Handbook 1850.04 and any subsequently negotiated agreements between the parties.
- C. When the Department does not provide uniforms, employees will be provided with a uniform allowance in accordance with VHA Handbook 1850.04 and be responsible for their uniforms. When the Department issues uniforms, the Department will be responsible for their maintenance, consistent with this Article. When a duty to bargain is triggered under the Statute by any changes to law, regulations, or VA policy, the Department will provide notice and bargain consistent with Article 13 - National Consultation Rights and Mid-term Bargaining.
- D. Additionally, specific procedures regarding Uniform and allowance issues not covered by VHA Handbook 1850.04 or this Article, will be bargained at the appropriate level-consistent with Article 13 - National Consultation Rights and Mid-term Bargaining.

### **Section 2 – Police Uniforms**

Uniforms, including requirements, logistics and uniform allowances for police officers will be administered consistent with 38 USC 903 and VA Handbook 0730.

### **Section 3 – Firefighter Uniforms**

Uniforms, including requirements, logistics and uniform allowances for firefighters will be administered in accordance with VHA Handbook 7701.02, Fire Department Services at VA Medical Centers and Domiciliaries and VHA Handbook 7701.01, Occupational Safety and

Health (OSH). The National Fire Protection Association (NFPA) standard 1975 addresses the design, performance, testing and certification of non-primary protective work apparel and the individual garments comprising work apparel. In the event that Department policy adopts the compliance standards of NFPA 1975, it will meet the standards for such uniforms. PPE for firefighters is addressed in Article 44 - Safety, Health and Environment.

#### **Section 4 – Repairs and Alterations**

The Department shall repair or alter government-issued uniforms including required patches and emblems.

#### **Section 5 – Uniform Issuance and Local Laundry Facilities**

- A. The number of uniforms issued to each employee must be the minimum required to ensure that a clean uniform is available each day. Five uniforms per employee are normally adequate. When the Department issues uniforms to employees, the uniforms may be laundered by the Department if that service is available at that local facility.
- B. Where laundry service is not readily available on site the following options for issuing uniforms may be utilized:
  - 1. Even exchange system - Where there is an even exchange system used, an employee receives a fresh uniform in exchange for a uniform they bring in.
  - 2. Bundle system - For medical facilities using the bundle system, issues in excess of five uniforms per employee may be justified.

#### **Section 6 – Distribution of Uniforms**

The Department shall provide a consistent and equitable distribution system that will allow for a convenient exchange of laundered Department issued uniforms.

#### **Section 7 – Replacement**

All Department issued uniforms and accessories shall be replaced when rendered unserviceable.

#### **Section 8 – Time to Change In and Out of Uniforms**

This section is addressed in Article 15 - Hours of Work.

### **ARTICLE 55 – DUES WITHHOLDING**

#### **Section 1 – Technology Changes**

In the event that the technology allows for the withholding, remittance or cancellation of dues electronically, the Department may use electronic forms in lieu of any paper forms currently in use. The Department will provide notice and meet any bargaining obligations consistent with Article 13 - National Consultation Rights and Mid-term Bargaining.

## **Section 2 – Voluntary Allotment**

Authorization for voluntary allotments of pay by employees for the payment of Union dues will be accepted and processed in accordance with applicable laws, government-wide regulations and this Agreement.

## **Section 3 – Allotment Forms**

- A. The Union shall provide the prescribed allotment forms (Standard Form 1187 or equivalent), distribute the form and educate eligible employees on the program for allotments for payment of dues and the uses and availability of the required form.
- B. Questions concerning whether an employee is in the unit of recognition and eligible for payroll deduction of Union dues as a bargaining unit employee will be resolved through consultations between the Human Resource Manager or designee and local union officials and/or through a unit clarification petition.

## **Section 4 – Effective Date**

An allotment authorization will be submitted to Human Resource Management Service (HRMS) (or designated office) at any time. Allotments will become effective at the beginning of the first pay period after receipt of the form in the Payroll Office (or designated office).

## **Section 5 – Management’s Responsibilities for Bargaining Unit Employees**

- A. Electronic transfer of funds is authorized for the transmittal of Union dues. The remittance of the dues withheld will be made payable to the Local Union and forwarded to the Comptroller Division, National Office, NAGE, 159 Burgin Parkway, Quincy, Massachusetts, 02169, within a reasonable period following the day on which the related salaries were paid to the members of the Union. A listing of employees' names and amount of dues withheld shall accompany each payment. The NAGE Washington, DC, Regional Office and the NAGE National Office will receive a copy of the listing.
- B. Local unions will receive the current membership listing, dues deductions, and anniversary date each pay period.
- C. The Department agrees to withhold Union dues from a back pay award to an employee who received a suspension, was on dues withholding at the time of the suspension, back pay was awarded regarding the suspension, and Union dues were not withheld during the period of suspension.
- D. The Employer shall automatically terminate an allotment when an employee:
  - 1. Leaves the unit as a result of any type of separation, transfer, or other personnel action (except details);
  - 2. Upon loss of exclusive recognition by the Union;
  - 3. When this Agreement providing for dues withholding is terminated by an appropriate authority outside the Department of Veterans Affairs; or,

4. When the employee has been suspended or expelled from the Local, in which case the Local shall so notify the HRMS (or designated office) in writing.
- E. In the event of administrative error resulting in the improper deduction of dues from an employee, the employee will be responsible for contacting the Union no later than three months from the date of the error and will provide the Union the necessary information to show that an administrative error was made. The Union will refund the appropriate amount to the employee.
- F. In the event that dues are properly collected from an employee but improperly disbursed to another labor organization, the Department shall take action to seek reimbursement of those funds in a timely manner. Once the Department has received reimbursement from the labor organization, the Department will disburse that amount to the Union in the next bi-weekly disbursement.
- G. An employee may request HRMS to provide a Standard Form 1188 or equivalent official approved standard form and the Department will provide such to a requesting employee.

#### **Section 6 – Time Frame For Revocation**

- A. An employee must maintain dues for one full year before being eligible to discontinue dues deductions.
- B. An employee will only submit any and all requests to terminate existing dues allotment between February 1 - 21. Effective date shall be the first pay period after March 1.
- C. An employee may submit a Standard Form 1188 or equivalent request to terminate an existing allotment to payroll, through HRMS.
- D. Department shall provide the Local a copy of the revocation form or equivalent request within five working days of receipt.

#### **Section 7 – Membership**

Nothing in this Agreement shall require an employee to become or remain a member of a labor organization or to pay money to the organization, except pursuant to voluntary, written authorization by a member for the payment of dues through payroll deductions. The requirements of this section apply to all supplemental, implementing, subsidiary and informal agreements between the Department and the Union.

#### **Section 8 – Service Fees**

In accordance with Statute, the Union will not be charged any service fee for the deduction of Union membership dues.

#### **Section 9 – Changes in Dues**

Changes in the amount of regular dues may be made not more frequently than once every six months. The National Office of the NAGE agrees to advise the Department in writing of the changes in regular dues. Notice shall be by Certified Mail, Return Receipt Requested. Within five working days of receipt, the Agency will notify the National Office of the NAGE of the pay

period that the dues increase will be effective. The authorized change will become effective no later than the beginning of the third pay period after receipt of the Certified Mail notice of the increase in dues.

## **ARTICLE 56 – USE OF OFFICIAL FACILITIES**

### **Section 1 – Union Office Space**

- A. The Department agrees to furnish office space to the NAGE local appropriate for carrying out its representational duties in locations easily accessible to employees and private citizens and of size, furnishings, and decor commensurate with other administrative offices within the facility. Office space shall be sufficiently private to ensure confidentiality to the maximum extent possible. The office(s) shall be of sufficient size for necessary storage of confidential materials.
- B. Nothing in this Article precludes the NAGE Local or the national representative found in 1C below from requesting additional space and office equipment provided in this Article.
- C. At the facility where a national NAGE representative is located and that national NAGE representative does not perform any local representational work, the local facility will provide a separate office space or provide a secure, private office within sharable office space of the NAGE Local sufficient to meet the requirements of 1A above. This private office will be keyed to that national representative and not the Local.

### **Section 2 – Meeting Space**

The Department will provide, on a space-available basis, conference rooms for discussions between employees and Local officials and suitable space for regular Union/Local meetings. The Union/Local agrees to exercise reasonable care in use of such space.

### **Section 3 – Telephone**

The Department will equip each Union/Local office with telephone lines and government long distance service. Telephones provided to the Union/Local shall have voice mail and speaker phone capabilities. Telephone usage will be consistent with VA policy, including but not limited to VA Handbook and Directive 6001 and 6500.

### **Section 4 – Equipment**

- A. The Department will provide to each local office the following:
  - 1. Fax machine;
  - 2. Up-to-date computer with standard up-to-date computer software similar to Word, Excel, PowerPoint, etc. that is available at the local facility, as well as VA network access and electronic storage necessary for representational duties, including email, VA Intranet (for VA employees) and Internet (In locations where the local parties have previously negotiated arrangements for computers, including use of more than one computer, the Local will continue to use those arrangements unless a change is bargained consistent with Article 13 - National Consultation Rights and Mid-term Bargaining);

3. Color printer;
  4. Scanner;
  5. Blackberry or equivalent;
  6. One laptop with wireless Internet capabilities and access to the VA network. In the event that more than one laptop is required, union representative will be granted temporary use of a VA laptop with wireless Internet from the local facility on request and subject to local availability, when required to travel to another VA location for representational duties;
  7. One USB thumb drive or mobile data storage device for VA use similar to what is currently in use in the facility;
  8. Consistent with VA policy, the ability to request remote access through Citrix or other application in use at that local facility;
  9. Photocopier equal to administrative office level in the Union office and access to high-volume production equipment in the facility;
- B. Equipment usage will be consistent with VA policy, including but not limited to VA Handbook and Directive 6001 and 6500.
- C. The Parties agree that the use of such equipment is for representational activities consistent with 5 USC Chapter 71 (the Statute) and VA Handbook and Directive 6001 and 6500. As new technology becomes available, equipment, software and programs used by administrative level officials shall be made available to the Union in a time frame consistent with availability to other administrative offices. Additionally, in the event that the Department changes the use and availability of equipment in this Article and a duty to bargain is triggered under the Statute, it will provide notice and bargain consistent with Article 13 - National Consultation Rights and Mid-term Bargaining.
- D. The Department agrees to furnish the Local access to maintenance of equipment provided in this Article. The Union/Local shall be provided access to video conferencing, live meeting or successor systems and other customary and routine services and equipment such as the VANTS system for conference calls subject to VA policy and local availability.

### **Section 5 – Bulletin Boards**

- A. In locations where the local Parties have previously negotiated arrangements for bulletin boards, including use of more than one bulletin board, the Local will continue to use those arrangements unless a change is bargained consistent with Article 13 - National Consultation Rights and Mid-term Bargaining.
- B. In the event of no local arrangement, at each facility, the Local will be provided bulletin boards and/or electronic bulletin board space in areas used for communicating to employees. The material posted must be clearly identified as that of the Union or Local and must not be libelous, scurrilous or inflammatory. Additional, specific arrangements not covered in this section will be negotiated consistent with Article 13 - National Consultation

Rights and Mid-term Bargaining.

### **Section 6 – Metered Mail**

Consistent with postal regulations, the Local shall have use of Department metered mail limited to representational matters. The Local shall not utilize metered mail for mass mailings.

### **Section 7 – Membership Drives**

- A. The Department agrees to provide adequate facilities written advance notice and subject to local availability for membership drives at locations that will provide access to unit employees during break and lunch periods. When necessary, detailed arrangements will be made at the local level.
- B. The Union/Locals will be given the use of facilities at least equal to that provided to other organizations, vendors or Department sponsored functions. The Union/Locals may access employee meal or break areas during membership drives. Membership drives are internal union business and are not an appropriate use of official or duty time.

### **Section 8 – Access to Reference Materials**

The Department shall provide each Local access to Title 5 and Title 38 of the U.S. Code, the corresponding implementing regulations from the Code of Federal Regulations, and all VA Directives and Handbooks.

### **Section 9 – Transportation**

- A. Where travel to another location within the jurisdiction of a Local union is necessary for representational activities consistent with the provisions of this Agreement, and the transportation is otherwise being provided to the location for official business the Local union will be provided transportation on a space-available basis.
- B. Where arrangements as described in A above are not possible the Local may pursue alternatives consistent with Article 19 - Official Travel.

## **ARTICLE 57 – INFORMATION AND UNIT MEMBERSHIP LISTS**

### **Section 1 – Membership Lists**

- A. The Department shall furnish to NAGE twice a year, at six-month intervals, a list of names, positions/titles, occupation series, grades, work locations and duty stations of all employees in the bargaining unit. This information will be furnished beginning 15 calendar days after the effective date of the Master Agreement.
- B. Each facility shall furnish to each local Union, on a quarterly basis, a list of names, positions/titles, occupational series, grades, service computation dates, work locations, and duty stations of all employees in the bargaining unit. Each facility shall, on a monthly basis, provide written notification to each Local Union a listing of all new and separated employees.

- C. Should the Department fail to provide the information in 1A or 1B, the Union or Local, as appropriate, will provide the Department with one reminder message and the Department will immediately provide the information.

## **Section 2 – Information**

- A. Consistent with 5 USC 7114(b)(4), the Department shall furnish to the Union upon request and to the extent not prohibited by law, data:
  - 1. Which is normally maintained by the Department in the regular course of business;
  - 2. Which is reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining; and
  - 3. Which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.
- B. The Department shall provide such information within a reasonable amount of time and at no cost.

## **Section 3 – Certification**

Upon request, the Department will review and discuss any concerns regarding the certification of a NAGE Local. Nothing precludes the Parties from individually or jointly requesting the FLRA to address a certification issue.

# **ARTICLE 58 – WAGE SURVEYS**

## **Section 1 – Applicability**

- A. This Article is applicable only when the Department elects to use Department personnel to conduct local wage surveys at the facility level. This Article is not applicable when the Department uses third parties to produce wage surveys.
- B. Pay surveys for Hybrid-Title 38 and Title 38 employees are not covered in this article.

## **Section 2 – Membership Survey Teams**

Should the facility director appoint a team to conduct a pay survey, the Union will be notified and may nominate one member for the wage survey team who will be on official time consistent with Article 6 - Official Time.

## **Section 3 – Procedures**

- A. All pay surveys will be done consistent with applicable law, government-wide regulations and VA policy.
- B. For Wage Grade employees, the Department will follow any OPM requirements regarding the wage survey process.

## **ARTICLE 59 – TIMELY AND PROPER COMPENSATION**

### **Section 1 – Timely Receipt**

- A. Employees are entitled to timely receipt of all wages earned for the applicable pay period. Employees shall receive their leave and earning statements in a secure manner and not later than payday, when available.
- B. In accordance with the Electronic Pay Mandate, codified in 31 USC 3332 and consistent with 31 CFR 208.3, employees will receive their salary payments electronically via Electronic Fund Transfer (EFT). Consistent with 31 USC 3332 and 31 CFR 208.4, an employee may request a waiver of EFT. However, such payment shall be paid to any employee granted a waiver by any method determined appropriate by the Secretary of the Treasury.

### **Section 2 – Errors in Payment**

- A. Employees will review their leave and earnings statements and notify their supervisors of any unexplained changes, and the Department will contact the appropriate officials and have errors corrected.
- B. When there is an error in payment, and the error is brought to the attention of the Department, the Department will advise employees of the procedures available to have the error corrected.
- C. Upon the employee's request, the Department will provide the necessary forms for filing a request for waiver of all overpayment of pay and allowances received in good faith. Additional information, including instructions and the form for seeking a waiver can be found at the [DFAS website](#).

### **Section 3 – Special Payments**

- A. VA will issue special payments (payments outside the normal bi-weekly processing cycle) to employees only when they have not received 90 percent of their basic pay and allowances during normal payroll processing.
- B. Whenever a Department error fails to provide correct amount of salary as described in 3A above, the Department will take immediate action to issue a special payment. Specifically, once the Department is made aware of the error, the Department will immediately act to correct the error and payment will be dispersed. Such special payment will be dispersed within three days from the date of correction. This would not apply to nominal errors (overtime, holiday pay, receiving over 90% of basic pay, etc.) that are routinely corrected through payroll adjustments.

## **ARTICLE 60 – SENIORITY**

- A. Seniority, for all purposes, except Reduction in Force (RIF), will be defined as either Service Computation Date (SCD) or VA Entrance on Duty (EOD), subject to D below.
- B. The Local will notify the facility Director (or designee) in writing, within 15 calendar days from the effective date of the Master Agreement whether they want to use SCD or EOD. If the

Local does not make a timely selection, SCD will be used for seniority purposes. Absent mutual agreement, this selection will be effective for the life of the Master Agreement.

- C. In the event of a tie for determining seniority, the following process will be used in sequential order:
  - 1. Entry into a specific administration (i.e. VHA, NCA, Canteen Service, etc.)
  - 2. Entry into a specific service line (i.e. Patient Care Services, Environmental Management, etc.)
  - 3. Entry into the work unit / work section
  - 4. Date of birth
- D. By mutual agreement, the local Parties may continue to use a different, existing practice for determining seniority other than those provided in A above.
- E. Seniority as it relates to Reduction in Force (RIF) and Staffing Adjustments is covered by 5 USC 3501 et seq., 5 CFR Part 351, VA Handbook 5005, Article 61 - Reduction in Force and Staffing Adjustments.

## **ARTICLE 61 – REDUCTION IN FORCE (RIF) / STAFFING ADJUSTMENTS**

### **Section 1 – Purpose**

The Department and the Union recognize that bargaining unit employees may be seriously and adversely affected by a RIF or Staffing Adjustment (Title 38). Management recognizes that attrition, reassignment, furlough, hiring freeze and early retirement are among the alternatives to RIFs and Staffing Adjustment that may be available. This Article describes the exclusive procedures the Department will take in the event of a RIF or Staffing Adjustment. It is also intended to protect the interests of employees while allowing the Department to exercise its rights and duties in carrying out the mission of the Department.

### **Section 2 – Applicable Laws and Regulations**

For purposes of Title 5 and Title 38 Hybrid employees, the policies, procedures and terminology described in this Article are to be interpreted in conformance with 5 USC 3501-04, 5 CFR Part 351, and other applicable government-wide laws and regulations. For purposes of Title 38 employees, the policies, procedures and terminology of this Article are to be interpreted in conformance with VA Directive and Handbook 5005.

### **Section 3 – Application**

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

### **Section 4 – Union Notification**

- A. Directors of VA facilities shall be responsible for properly notifying the Union in conjunction with RIFs or Staffing Adjustments.
  - 1. A facility-based action affecting the interests of one Local shall require notice to the President of that Local.
  - 2. A facility-based action affecting the interests of two or more Locals shall require notice to a party designated by the NAGE national office.
- B. In the event of a RIF or Staffing Adjustment, the Department agrees to notify the Union as described in Paragraphs A (1) and (2) in this Section at the earliest possible date consistent with the time frames in Article 13 - National Consultation Rights and Mid-Term Bargaining.
- C. All notices per Sections A and B above will be given prior to any notice to affected bargaining unit employees. Verbal notices will be confirmed in writing.
- D. A properly constructed notice to the Union under this Section shall consist, at a minimum, of the following information:
  - 1. The reason for the action;
  - 2. The approximate number, types, and geographic location of positions affected; and
  - 3. The approximate date of the action.

## **Section 5 – Definitions**

For the purposes of this Article, the following items are defined in law and regulations and are included for informational purposes:

### **A. Reduction In Force (RIF)**

When the Department releases a competing employee from his or her Competitive Level by furlough for more than 30 days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work, shortage of funds, insufficient personnel ceiling, reorganization, the exercise of reemployment rights or restoration rights, or reclassification of an employee's position due to erosion of duties when such action will take effect after the Department has formally announced a reduction in force in the employee's Competitive Area and when the reduction in force will take effect within 180 days.

### **B. Title 38 Staffing Adjustment**

A Staffing Adjustment is a formal procedure used to modify organizations through changes in staff patterns or levels. Staffing Adjustment may impact Title 38 employees through separation or reassignment to other facilities or commuting areas, changes in assignments or reassignment within the facility, and changes to a lower grade or pay.

### **C. Competitive Area**

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

#### D. Competitive Level

Positions in a Competitive Area are in the same grade (or occupational level) and classification series that are so alike in qualification requirements, duties, pay schedule, and working conditions that the incumbent of one position can successfully perform the critical elements of any other position in the level upon assignment to it without undue interruption is known as a Competitive Level. Competitive Levels for Title 38 employees will be determined in accordance within VA Directive and Handbook 5005.

### **Section 6 – Freezing of Vacancies (RIF)**

The Department will freeze all relevant vacant positions within the facility 60 days prior to the effective date. When the Department decides to fill a vacant position after the effective date of the RIF, whether previously frozen by virtue of RIF or in the creation of new vacancies, employees who have been demoted will be offered the vacancy, provided the employee is qualified or has been given a waiver of qualifications for the intended position.

### **Section 7 – Employee Notification**

An individual employee who is adversely affected by a RIF or Staffing Adjustment shall be given a specific notice not less than 60 days prior to the effective date of the action. All such notices shall contain information required by OPM, 5 CFR Part 351 and VA Directive and Handbook 5005.

### **Section 8 – Content of Notice**

A. RIF - The content of the specific notice shall include the following information:

1. The specific action to be taken;
2. The effective date of the action;
3. The employee's Competitive Area, Competitive Level, subgroup and service date, and the annual performance ratings of record for the applicable three years;
4. The place where the employee may inspect the regulations and records pertinent to his or her case;
5. The reasons for retaining a lower standing employee in the same Competitive Level because of a continuing and temporary exception;
6. Grade and pay retention information; and
7. The employee's appeal rights.

B. Staffing Adjustment- In accordance with VA Directive and Handbook 5005, the content of the specific notice shall include the following information:

1. Reassignments to another facility or Commuting Area,
2. The reason(s) for the reassignment,
3. Information about the new assignment, its location, and the effective date,
4. The employee's appeal rights,
5. The opportunity to accept or decline the reassignment,
6. Separations:
  - a. The reasons for the staff adjustment,
  - b. Notification that the employee's position has been determined to be in excess of local needs,
  - c. Notice that an assignment is not available and the employee will be separated not less than 60 days from the date of the advance general notice,
  - d. Information regarding outplacement activities,
  - e. Notice that the separation may be cancelled if an assignment becomes available prior to the effective date of separation and,
  - f. The employee's appeal rights.

## **Section 9 – Employee Information**

The Department shall:

- A. Inform all employees in the Competitive Area as fully and as soon as possible of any plans for RIFs and Staffing Adjustments,
- B. Inform all affected employees of the extent of the affected Competitive Area, the regulations governing such action and the kinds of assistance provided to affected employees,
- C. Maintain and publicize a list of vacancies Department-wide and maintain a copy of any available government-wide job bulletins and websites, and,
- D. Conduct a placement program within the Department to minimize the adverse impact on employees who are affected by RIF or Staffing Adjustments. The placement program will include counseling for employees by qualified personnel on opportunities and alternatives available to affected employees.

## **Section 10 – Personnel Files**

The Union may review any bargaining unit employee's personnel folder at the employee's request in writing if the employee believes that the information used to place the employee is

inaccurate, incomplete, or not in accordance with law, rules, regulations or provisions of this Article.

### **Section 11 – RIF Retention Register**

A copy of the RIF retention register and any updates will be made available to the Union at the earliest possible time.

### **Section 12 – Employee Use of Authorized Time and Department Facilities**

Employees who are identified for separation or change to a lower grade as a result of a RIF or Staffing Adjustment shall be entitled to reasonable time while otherwise in a duty status without charge to leave for:

- A. Preparing, revising and reproducing job resumes and/or job application forms,
- B. Participating in employment interviews,
- C. Using the telephone to locate suitable employment,
- D. Reviewing job bulletins, websites, announcements, etc.,
- E. Such employees will also be entitled to reasonable use of the available facilities and/or services for the purpose of locating suitable employment: telephone/FTS, reproduction equipment, interagency mail, E-mail, typing and counseling, and,
- F. The determination as to what is reasonable time will be determined through local bargaining. Release of Title 38 employees under this section will be subject to direct patient care needs as determined by management.

### **Section 13 – Performance Appraisals (RIF)**

Except for employees who are re-rated after a period allowed in 5 CFR Part 432, annual performance appraisals for the purpose of retention standing will be frozen 60 days prior to the effective date of the action. The three latest annual appraisals of record prior to the freeze will be used to determine eligibility for additional credit toward an employee's service computation date. To be credited under this Section, an appraisal must have been issued to the employee with all appropriate reviews and signatures and must be on record.

### **Section 14 – Release from Competitive Level (RIF)**

When an employee is to be released from the employee's level, the "best offer" is made. The offer will be as close to the employee's current grade as possible and in the same commuting area if possible.

### **Section 15 – Employee Response to Specific Notice**

Upon receipt of specific notice informing the employee that he or she is offered a reassignment or change to lower grade or will be released from his or her Competitive Level, the employee shall have 14 days in which to accept or reject the offer made.

## **Section 16 – Repromotion Rights of Affected Employee**

Repromotion rights of affected employees are subject to government-wide rule and regulations and VA Directives and Handbooks 5005 and subject to local bargaining to the extent required by law.

## **Section 17 – Reassignments to Different Geographic Area**

Reassignments outside an employee's commuting area are subject to government-wide rules and regulations and VA Directives and Handbooks 5005 and subject to local bargaining to the extent required by law.

## **Section 18 – Displaced Employees**

The Department shall provide employees to be separated by RIF or Staffing Adjustment with the appropriate information regarding unemployment benefits available to them.

## **Section 19 – Transfer of Function**

- A. Transfer of function means the transfer of the performance of a continuing function from one Competitive Area and its addition to one or more other Competitive Areas, except when the function involved is virtually identical to functions already being performed in the other Competitive Area(s) affected; or the movement of the Competitive Area in which the function is performed to another commuting area.
- B. When a transfer of function occurs, the Department will first solicit qualified volunteers for transfer from among those employees in positions that have been identified for transfer. If there are not enough qualified volunteers from among these affected employees, the Department will solicit qualified volunteers from the losing Competitive Area.
- C. If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the Competitive Area that is gaining the function, preference will be given to the volunteers with the highest retention standing. In the event there are not enough volunteers for the transfer, the employee(s) with the lowest retention standing will be selected.
- D. Whenever possible, affected employees who do not volunteer to be transferred shall be reassigned to vacant positions within the Competitive Area for which the employee is qualified and which management has determined to fill.
- E. If a transfer of function affects Title 38 employees, the policies and procedures of VA Handbooks and Directives 5005 will apply.
- F. Other issues relating to transfer of function is subject to local bargaining to the extent required by law.

## **Section 20 – Reorganization**

- A. A reorganization is the planned elimination, addition or redistribution of functions or duties in an organization.

- B. Issues related to reorganization are subject to bargaining at the appropriate level consistent with Article 13 - National Consultation Rights and Mid-term Bargaining, to the extent required by law.

## **ARTICLE 62 – HYBRID TITLE 38**

### **Section 1 – General**

- A. Hybrid Title 38 are covered by Title 5 and Title 38 laws and regulations. Generally, Hybrids are covered by Title 38 for appointment, advancement, and certain pay matters, and Title 5 for performance appraisal, leave, hours of duty, adverse actions, probationary period, reemployment rights, reduction-in-force and retirement rules. For specific information see VA Handbook 5005.
- B. Upon conversion to Hybrid Title 38, employees will be provided a written packet of information explaining the impact of the changes. This information may also be provided through Talent Management System (TMS) or its equivalent. The information provided shall include, but not be limited to, details of the boarding process as well as the changes in appointments, advancements, and pay resulting from Title 5 to Hybrid Title 38 conversions.
- C. The Department's authority to promote and advance Hybrid Title 38 employees is subject to 38 USC 7403 and VA Handbook 5005. Any language in this Article from VA Handbooks and Directives, including 5005, is included for informational purposes only and is not part of the negotiated agreement.
- D. The Local will receive salary data, when requested, and may provide input on salary changes resulting from that data in advance.
- E. The Local will receive new functional statements and changes to existing functional statements, in advance, with an opportunity to comment.
- F. When a duty to bargain is triggered by the Statute, the Department will give notice and bargain consistent with Article 13 - National Consultation Rights and Mid-term Bargaining.

### **Section 2 – Promotion and Reconsideration**

- A. The promotion eligibility and subsequent reconsideration process for Hybrid Title 38 employees appointed under 38 USC 7401(3) and 38 USC 7405(a)(1)(B) is made under the Department's promotion and reconsideration process pursuant to VHA Handbook 5005 Part III, Chapter 4 and the provisions of 38 USC 7403. The Department's promotion and reconsideration process may be found in VA Handbook 5005. Changes to this policy will be accomplished through collaboration pursuant to 38 USC 7403.
- B. Consistent with VA Handbook 5021, Part IV, Chapter 3, requests for promotion reconsideration are excluded from the agency grievance procedure. Promotion reconsideration is also excluded from the negotiated grievance procedure pursuant to 38 USC 7403(f)(1)(B).
- C. Consistent with VA Handbook 5005:

1. Promotion actions will be taken without regard to race, color, religion, sex, national origin, disability, age, sexual orientation, labor affiliation or non-affiliation, status as a parent, or any other non-merit factor, and shall be based solely on job-related criteria.
2. Qualification standards for individuals appointed under 38 USC 7401(3) are based primarily on the rank-in-person concept, where the combination of individuals' accomplishments, performance and qualifications determine their grade level. For assignments above the full-performance level, the higher-level duties must consist of significant scope, complexity (difficulty), and range of variety, and be performed by the incumbent at least 25% of the time.
3. The Department will issue copies of their respective occupation qualification standards to hybrid employees at the time of initial appointment and at the time of a newly published standard.

### **Section 3 – Promotion Eligibility At Or Below the Full Performance Level**

- A. For occupations covered by these guidelines, the full performance (journey) level may vary depending on the complexities of the assignment or the competencies possessed by the individual and are not dependent on the entry level grade of the occupation. In this rank-in-person system, the promotion potential of positions may not be limited to grades below the full performance level as identified in the qualification standard.
- B. The employee shall be notified of eligibility for promotion consideration on his or her anniversary date and be given 30 days to submit to the employee's supervisor a self-assessment of his or her qualifications for promotion consideration. Employees may also notify their supervisor in writing that they are declining to submit a self-assessment during this 30 day period.
- C. Upon receipt of the employee's self-assessment, the supervisor will make a recommendation on promotion that is to be acted upon by the approving official within 30 days of the self-assessment being received. Promotions will become effective on the first day of the first full pay period following approval by the second level supervisor. In no case will the promotion be effected later than the first day of the first full pay period commencing 60 days after the employee's anniversary date.
- D. Employees who have not demonstrated such capability will be informed in writing by the supervisor that they are not being recommended for promotion. The written notice will state the reason(s) why the employee does not meet the criteria for promotion. Upon request, the supervisor, or designee, will meet with the employee and provide clarification of the qualification standards not met. The supervisor may recommend the employee for promotion at a later date if it is determined that the employee has met the appropriate criteria. If not promoted during the intervening period, the employee is entitled to promotion consideration on the next anniversary date of grade.

### **Section 4 – Promotion Eligibility Above the Full Performance Level**

- A. Employees who are eligible for promotion consideration to a grade that requires a combination of personal qualifications and assignment characteristics are to be considered for promotion to such grades on the first anniversary date of their last promotion, provided they meet the administrative requirements. In addition, employees who are selected for

supervisory or managerial assignments or for assignments based on complexity that warrant consideration for a higher grade will be considered for promotion on a date other than the anniversary date of last promotion. The employee's anniversary date is the date of appointment or date of last promotion. If an employee is unable to access his or her anniversary date on the respective service screen, the anniversary date will be provided to the employee in writing by the Department.

- B. If, after reviewing the employee's self-assessment (if submitted), and other relevant material, the appropriate department official (e.g., service chief) determines that the assignment does not meet the qualification standard for a higher grade, that official shall document the reasons for this determination in writing and provide a copy of the determination to the employee.
- C. When a revised qualification standard is implemented that gives a facility discretion to fill or not fill a position(s) under position management, it shall be done under the requirement to keep functional statements accurate and in accordance with Article 26 - Merit Promotion in which all Hybrid Title 38 employees in the facility who are qualified for the position(s) will have equal consideration for promotion.

#### **Section 5 – Reconsideration to Grades at or Below the Full Performance Level**

- A. Notice of Decision - Employees are to be advised by their supervisors in writing of any decision not to promote them, of the reason(s) for the decision, of their right to request reconsideration, and that reconsideration must be preceded by an informal discussion with their supervisor.
- B. Reconsideration Process:
  - 1. If promotion to a grade at or below the full performance level is involved, the employee may, within 30 days of being notified of the decision, submit a written request through the immediate supervisor to the second level supervisor. The employee's written request for reconsideration must indicate when the informal discussion was held with the immediate supervisor and cite the specific reason(s) why the employee believes the decision was not proper. The approving official or designee may extend the 30 day period at the written request of the employee if the employee is unable to submit the information for reasons beyond the employee's control.
  - 2. Second level supervisors are to review the employee's request within 30 days and determine whether to promote the employee. If a second level supervisor determines that a promotion is not warranted, the supervisor will provide the reasons for this decision to the employee in writing.
  - 3. If the employee is not satisfied with the explanation of the determination to not promote, the employee can request within 30 days to have the determination reviewed by the next higher level board. The employee's request for reconsideration and the supervisor's explanation will be forwarded to the higher level board within 30 days.
  - 4. The higher level board will make a recommendation within 30 days to the appropriate approving official, who will make a final decision within 30 days.
  - 5. If the promotion is approved, the employee is to be promoted on the first day of the first

pay period following a decision by the approving official. In no case will the promotion be effected later than the first day of the first full pay period commencing 180 days after the employee submits a written request for reconsideration, unless the employee requested an extension to the 30 day period to submit a written request for reconsideration. In such cases, the number of additional days taken by the employee to submit a request will be added to the 180 day time limit. If the promotion is denied, the employee will be provided with a copy of the board action.

## **Section 6 – Reconsideration for Promotions to Grades Above the Full Performance Level**

- A. An employee may submit a written request for reconsideration through the supervisor to the next higher level Professional Standards Board for review within 30 calendar days of the non-promotion decision. The approving official or designee may extend the 30 day period at the written request of the employee if the employee is unable to submit the information for reasons beyond the employee's control. The employee's written request for reconsideration must indicate when the informal discussion was held with the immediate supervisor and cite the specific reason(s) why the employee believes the decision was not proper. Supervisors are to review and comment on the employee's request in writing, and provide copies of those comments to the employee within 30 days.
- B. The appropriate Professional Standards Board will review the information submitted by the employee, along with the supervisor's comments, and make a recommendation to the approving official within 30 days. Its recommendation may be extended up to the number of days it took the employee to provide the Board with the appropriate information. Upon completing its review, the Professional Standards Board is to forward its recommendation to the approving official for action.
- C. Upon review of the reconsideration file, the approving official shall take one of the following actions within 30 days:
  1. Request any additional information needed to make a decision. This includes, but is not limited to, meeting with representatives of the Professional Standards Board, the employee, and/or the employee's supervisor prior to making a decision under paragraph 2 or 3 below.
  2. Approve the employee's promotion. Promotions will be made effective on the first day of the first full pay period following approval. In no case will the promotion be effected later than the first day of the first full pay period commencing 120 days after the employee submits a written request for reconsideration, unless the employee requested an extension of the 30 day period to submit a written request for reconsideration. In such cases the number of additional days taken by the employee to submit a request will be added to the 120 day time limit.
  3. Disapprove the promotion and notify the employee of the decision and the reasons for it, in writing.

## **Section 7 – Effective Date**

The promotion will be made effective by Human Resources on the first day of the pay period following the date of approval of the promotion by the approving official, but in no case earlier than the date on which all administrative requirements are met. A promotion may also be made

effective at a future date set by the approving authority that does not violate law or negotiated agreement when doing so would benefit the employee. Promotion recommendations and actions that are administratively delayed beyond the time limits specified in VA Handbook 5005 will be made retroactively consistent with VA policy.

### **Section 8 – Professional Standards Boards**

The organizational structure of Hybrid Title 38 Professional Standards Boards is governed by VA Handbook 5005, Part II, Appendix O. The Local will be notified of the selections for the boards and may provide input or concerns regarding board composition.

### **Section 9 – Vacancy Announcements**

Vacancy announcements of Hybrid Title 38 employees are covered in Article 26 - Merit Promotion.

### **Section 10 – Training**

Training opportunities for Hybrid Title 38 employees are covered in Article 23 - Training and Career Development.

### **Section 11 – Functional Statements**

- A. At the time of initial assignment and upon request, employees will be furnished a current, accurate copy of the description of the position to which they are assigned. The functional statement will have the date evaluated and the signature of the supervisor. The option will be given to the employee to sign the functional statement upon receipt. The Local will be provided the opportunity to review and comment on proposed changes in all functional statements and receive copies of updated functional statements and organizational charts.
- B. Whenever possible, employees will be afforded the opportunity to assist in the preparation of their functional statements; however, supervisors and/or managers are responsible for assigning work to positions and insuring they are accurate.
- C. Copies of current functional statements for bargaining unit positions will be provided to the Local upon request. Functional statements will be kept current and accurate, and positions will be graded properly.

## **ARTICLE 63 – TITLE 38 ASSIGNMENTS AND OBJECTION TO WORK ASSIGNMENTS**

### **Section 1 – General**

- A. This Article only covers Title 38 employees, not Title 5 or Hybrid Title 38 employees. Accordingly, the provisions of this Article will be applied consistent with 38 USC 7422.
- B. In keeping with the expectation that employees have a continuing interest in professional growth, the parties recognize an employee's interest in developing and/or enhancing his or her professional skills. Employees are encouraged to bring their particular interests or concerns to the attention of their supervisor. The Department will give full consideration to the interests

or concerns raised by the employee and respond in a timely manner. Additional specifics regarding training opportunities and details can be found in Article 23 - Training and Career Development or Article 25 - Details, Reassignments and Temporary Promotions.

- C. The Department and NAGE agree that the goal of VA staffing guidelines is to support and maintain a standardized approach in providing care through appropriate staffing levels. In the event that the Department establishes staffing guidelines and such guidelines are not followed, the Union may request to discuss such concerns at the appropriate Department level.

## **Section 2 – Work Assignments and Objections to Work Assignments**

- A. The Union and the Department agree that it is the responsibility of the Department to provide for the safety of patients and their families as well as for the safety of the staff assigned. As such, it is a management right to assign work to meet the needs of patients and ensure staff safety, consistent with 38 USC 7422.
- B. It is the employee's responsibility to notify the Department at the time when in the employee's professional judgment the assignment has become unsafe for patients or staff. This can be at any point during the work shift.
- C. When an employee believes a work assignment would place a patient, the employee, or another staff member in an unsafe situation, the employee will immediately verbally notify the supervisor or other appropriate Department official if the supervisor is not available. The supervisor or other appropriate Department official will then discuss and assess the situation and determine whether or not the assignment should be carried out. If the supervisor or Department official determines the assignment should be carried out; the employee will complete the assignment.
- D. An employee who wishes to express concern(s) about a work assignment or believes the work assignment was unsafe may submit written documentation, (which may include the Assignment Despite Objection (ADO) form, Appendix C) to the appropriate supervisor. This can be submitted at any time during the assignment or after completion. The employee is free to make suggestions or recommendations for resolution of concerns. The Department will give full consideration to any concerns or suggestions raised by the employee.
- E. The ADO form referenced in this Article is not a VA form.
- F. Employees will forward copies of completed ADO forms or other written documentation to their supervisor on duty and the Local.
- G. Any objection to work assignments including completion of the ADO form or other written memo will not be considered by either party as punitive but as a communication tool to improve working conditions and patient care.
- H. Upon receipt, the Department will immediately review the situation documented in the ADO form or other written memo. The Department will respond to the employee and take action as warranted. If the Department makes a written response a copy will be provided to the employee and the Local.

- I. At the request of the Local, the Service Chief or designee will meet with the Local to discuss objections to work assignments. The Department will give full consideration to any concerns raised.
- J. The Local may educate all employees on the purpose and use of the ADO process.

## **ARTICLE 64 – PROFICIENCIES FOR REGISTERED NURSES AND OTHER TITLE 38 EMPLOYEES**

### **Section 1 – General**

- A. This article only covers Title 38 employees, not Title 5 or Hybrid Title 38 employees. Accordingly, the provisions of this article will be applied consistent with 38 USC 7422.
- B. The language in this article from VA Handbooks and Directives covering Title 38 proficiencies is included for informational purposes only and is not part of the negotiated agreement.
- C. Failure to issue proficiencies by the due date in VA regulations may be grieved. This is not intended to allow for arbitration or other third party review other than what is allowed for in VA Handbook 5013, Part II, or its successor document.
- D. The goal of the Department’s Title 38 proficiency rating system is to provide for a planned review, analysis and evaluation of the performance of Title 38 employees. VA Handbook 5013, Part II, and VA Handbook 5005, or its negotiated successor document in accordance with Article 13 - National Consultation Rights and Mid-Term Bargaining, govern the Department’s Title 38 proficiency rating system, including instructions for periodic counseling of employees, regular annual proficiency ratings, delays of annual proficiency ratings, and for special ratings when administratively required.
- E. Upon request, the Department will provide to the Local, a list of all bargaining unit Title 38 employees who have delayed proficiencies. The report will contain the name, the proficiency due date and number of late proficiencies for that facility.
- F. The remainder of this article pertains to Registered Nurses (RN) only.

### **Section 2 – RN Proficiency Reporting**

- A. The Department supports a continuous learning environment for RNs in preparing for and writing proficiency content related to the Nurse Qualifications Standards (NQS) and professional requirements for performance. All newly-appointed RNs will be educated at their local facility in the proficiency requirements to include processes and procedures for providing input into the evaluation process. Annual training on NQS and proficiencies will be provided. Additional ongoing education for all RNs is available on the Office of Nursing Services website.
- B. RNs will be notified 90 days prior to the due date of their proficiency, with the exception of special reports. Special reports shall be prepared in accordance with applicable Department policy.

- C. RNs will have the opportunity to provide information that will be used in their proficiency, no later than 60 days prior to the due date. This does not apply to special reports.
- D. As prescribed by VA Handbook 5005, Part III, Chapter 4, upon completion of the degree requirement, a RN or nurse anesthetist may be considered for promotion if the administrative requirements are met. This is the only time a RN or nurse anesthetist may be considered for promotion other than on the anniversary date of grade.
- E. RNs will receive current copies of criteria for promotion and special advancement on initial employment. RNs will receive updated copies of the promotion and special advancement criteria when changes are made.
- F. Where RNs are not promoted, they will receive a written explanation regarding those specific elements in which they are deficient.

### **Section 3 – RN Delays in Proficiencies**

- A. The Parties recognize that RNs whose proficiencies have been delayed beyond the timeframes specified in VA regulations, and who would have been advanced but for the delay, should be made whole pursuant to VA regulations.
- B. Failure to issue proficiencies by the due date in VA regulations (anniversary date of grade) may be grieved. This is not intended to allow for arbitration or other third party review what is allowed for in VA Handbook 5013, Part II, or its successor document.
- C. RNs who demonstrate areas of less than satisfactory performance will be given counseling which includes direction for improvement. Each RN will be given an opportunity to improve, normally no less than 90 days prior to the proficiency due date. Counseling and follow up to improve the less than satisfactory performance will be completed according to the guidance in VA Handbook 5013, Part II.

## **ARTICLE 65 – TITLE 38 ADVANCEMENT**

- A. This Article only covers Title 38 employees, not Title 5 or Hybrid Title 38 employees. Accordingly, the provisions of this article will be applied consistent with 38 USC 7422.
- B. It is the goal of the Department that any pay change resulting from advancement will be made within two pay periods from the effective date of the advancement. In the event that the pay change is not made within two pay periods, the Local will notify the applicable local management official of the delay.
- C. Notice of decisions on advancement shall be communicated in writing within ten workdays of the action taken.
- D. Supervisors shall monitor and review performance in order to determine progress or problems and to provide employees with information concerning performance. Discussions

about performance will be held as often as needed, as determined by the supervisor. Employees are encouraged to request to meet with their supervisors to discuss concerns regarding performance.

## **ARTICLE 66 – TITLE 38 VACANCY ANNOUNCEMENTS**

### **Section 1 – General**

- A. 38 USC Chapter 74 provides the Secretary of Veterans Affairs with authority to hire personnel listed in 38 USC 7401 directly, without regard to civil service hiring requirements. The Department may fill these positions without posting vacancy announcements. If the Department elects to post a vacancy announcement, it may simultaneously post such positions internally and externally.
- B. When the Department elects to post a vacancy announcement, it will be posted for 10 calendar days. However, when there is evidence of a critical staffing shortage or a lack of qualified internal candidates, the Department may fill the position prior to the expiration date of the announcement and will notify the Local.
- C. Once a selection has been made, the Local may request a list of those who have applied for a specific position.

### **Section 2 – Contents of Vacancy Announcement**

When the Department elects to post a vacancy announcement, the qualifications for the position and the educational/certification level will be kept current and clearly defined on the vacancy announcement. If the requirements of the job/position change, the vacancy announcement will be reposted reflecting the changes.

### **Section 3 – Selection Process**

- A. All applicants that are interviewed will be asked the same core questions during an interview. However, follow-up questions may vary, based upon the applicant's response.
- B. At the request of the employee, the selecting official will advise the employee why he or she was not selected for the position.

### **Section 4 – Title 38 Position Qualifications**

- A. Prior to the development of new qualification standards for Title 38 bargaining unit positions, the Union will be pre-decisionally involved, consistent with Article 11 - Labor-Management Cooperation, and may submit recommendations for criteria to be used in the development of those standards.
- B. Additionally, the Local will be provided copies of posted, vacant positions. The Department will accept and consider the Local Union's comments on posted vacancy announcements.
- C. When the Department elects to simultaneously post internally and externally, the Department will initially evaluate the applications of current employees when filling vacant positions before evaluating the outside candidates.

## **ARTICLE 67 – TITLE 38 LOCALITY PAY SURVEY / PREMIUM PAY**

### **Section 1 – General**

- A. This Article only covers Title 38 employees, not Title 5 or Hybrid Title 38 employees. Accordingly, the provisions of this Article will be applied consistent with 38 USC 7422.
- B. Any language in this Article from VA Handbooks and Directives covering Title 38 pay issues is included for informational purposes only and are not part of the negotiated agreement.

### **Section 2 – RN Pay Survey**

- A. VA policy prescribes both valid mechanisms for the collection of survey data and the order in which types of available survey data are applied to increase existing rates or establish new rates of pay for nurse schedules. A facility may utilize a local contractor provided survey, a national third party salary survey, or if salary survey data is not readily available, the facility may perform a Department conducted Nurse Locality Pay Survey, with survey team members appointed by the Medical Center Director (MCD).
- B. Should the MCD appoint a team to conduct a Nurse Locality Pay Survey, the Local union will be notified and may recommend names for inclusion as team members. RN pay scales are determined by the Department and are not subject to collective bargaining and/or the negotiated grievance procedure. This does not preclude the Local union from providing information and recommendations for RN pay scales. Upon request, the Local union will be provided a copy of the data used to determine RN pay scales.
- C. If national data is used, the Department will discuss with the Local the data used in its review and provide a copy, upon request.
- D. Local may recommend certain establishments within the geographic survey area to be contacted for Department conducted surveys.
- E. Local shall have the right, if it believes circumstances in the geographical area warrant, to submit a request to the Medical Center Director (MCD) to have a locality pay survey conducted. The MCD will give full consideration to this request prior to making his or her final determination.
- F. If a survey is not conducted, the MCD or designee will provide a written explanation of his or her decision, upon request.

### **Section 3 – Adjustment to RN Pay**

Consistent with this Article, please see Article 59 - Timely and Proper Compensation, Section 2, for information regarding errors in payment.

## **Section 4 – Premium Pay**

RN premium pay is governed by 38 USC 7453.

## **ARTICLE 68 – TITLE 38 PHYSICAL STANDARDS BOARDS**

- A. This Article applies only to Title 38 employees, not Title 5 or Hybrid Title 38 employees. Accordingly, the provisions of this Article will be applied consistent with 38 USC 7422. Any language in this Article from VA Handbooks and Directives covering Physical Standards Boards is not part of the negotiated agreement and is provided for informational purposes only. The Physical Standards Board (PSB) process, and/or the examination and evaluation process for Title 38 employees, is governed by 38 USC Chapter 73 and 38 USC Chapter 74 and VA Handbook 5019, or its negotiated successor document in accordance with Article 13 - National Consultation Rights and Mid-Term Bargaining.
- B. In accordance with VA Handbook 5019, or its negotiated successor document in accordance with Article 13 - National Consultation Rights and Mid-Term Bargaining, the Department may direct a Title 38 employee to undergo an examination to resolve questions of physical or mental ability to perform the duties of his or her position. An examination may also be necessary to determine physical and mental fitness to resume duty after illness.
- C. In the event that the Department believes that a Title 38 employee is physically or mentally incapable of performing their duties, the Department will give a reason to the employee in writing. The employee shall be entitled to meet with the recommending medical official and to provide any oral and written evidence from his or her own physician/counselor before a recommendation is made. In any such meeting, the employee is entitled to Union representation and shall be provided notification in advance of the meeting.
- D. If a decision is made that would remove any Title 38 employee from his or her position or duties for physical or mental inability to perform, the employee shall be entitled to use the appropriate appeals procedure under existing Title 38 regulations. A copy of the relevant VA Directives, Handbooks, policies, etc., pertaining to the appeals procedure will be given to the employee.
- E. Confidentiality must be maintained throughout the review process.

## **ARTICLE 69 – TITLE 38 PROFESSIONAL STANDARDS BOARDS (PSBs)**

### **Section 1 – General**

- A. This Article only covers Title 38 employees, not Title 5 or Hybrid Title 38 employees. Accordingly, the provisions of this Article will be applied consistent with 38 USC 7422.

- B. Procedures for Professional Standards Boards (PSBs) are governed by VA Handbook 5005 and VA Handbook 5021. Any language in this Article from VA Handbooks and Directives covering Title 38 Professional Standards Boards is included for informational purposes only and are not part of the negotiated agreement.
- C. Employees normally will be reviewed annually by the PSB.
- D. The Local may submit names of candidates for PSBs. The Department will give serious consideration to appointing from the candidates recommended by the Local. Such appointments are made without regard to bargaining unit membership or other affiliations. Employees appointed to the PSB must divest themselves of their identity with the particular facility at which they are employed, and their labor union, and must become the representative of the Secretary of the VA.

## **Section 2 – Representation**

Consistent with VA policy:

- A. When an employee is the subject of a Title 38 Disciplinary Appeals Board (DAB), the employee is entitled to designate a personal (non-union) representative of their choice, who may be from the Local. The personal representative is not representing the Local and cannot use official time. The personal representative must protect the confidentiality of any information to which they have access in connection with the DAB hearing. A representative in a DAB hearing may speak, clarify, ask questions, and present the interests of the employee for whom they represent. However, the representative may not unnecessarily interfere with or delay the proceeding.
- B. If the employee does not choose to have representation, the Local will be permitted to have a non-participatory observer present at the DAB. The union observer will be on official time, consistent with Article 6 - Official Time. The union observer may attend the hearing only during the bargaining unit employee's presentation. The observer must protect the confidentiality of any information to which they have access in connection with the board hearing.
- C. When an employee is the subject of a Summary Review Board (SRB), the employee is entitled to a representative of their choice, provided the choice would not create a conflict of interest. The representative must protect the confidentiality of any information to which they have access in connection with the SRB hearing. A representative in a SRB hearing may speak, clarify, ask questions, and present the interests of the employee for whom they represent. However, the representative may not unnecessarily interfere with or delay the proceeding. The union representative may attend the hearing only during the bargaining unit employee's presentation.

## ARTICLE 70 – VHA PHYSICIAN AND DENTIST PAY

### Section 1 – General

- A. This Article only covers Title 38 employees, not Title 5 or Hybrid Title 38 employees. Accordingly, the provisions of this Article will be applied consistent with 38 USC 7422. Compensation is excluded from negotiation under 38 USC 7422.
- B. Physician and Dentist pay in the VHA is governed by Title 38 of the United States Code and VA Handbook 5007, Part IX. The following language in this Article covering VHA Physician and Dentist Pay is included for informational purposes only and is not part of the negotiated agreement.

### Section 2 – Pay Components

- A. The Compensation Panel recommendations are taken into consideration by the appropriate approving official. The approving official determines the amount of market pay to be paid a Physician or Dentist after consideration of the range and tier recommended by the Panel. The approving official's decision is final.
- B. The Compensation Panel will recommend the following to the approving official in regard to the pay for individual physicians or Dentists:
  - 1. The appropriate specialty or assignment pay schedule;
  - 2. The appropriate tier for the Physician or Dentist using the tier definitions; and,
  - 3. A rate or an appropriate range of market pay for a Physician or Dentist, considering the nationwide minimum and maximum amounts of annual pay prescribed by the Secretary for the specialty or assignment.
- C. Compensation Panels:
  - 1. Composition of Panels - Each panel is comprised of at least three physicians one of whom is designated as chairperson. Compensation Panels for Dentists are comprised of at least two Dentists only at tier 1.
  - 2. Upon request, the local union will receive notification and information on who currently serves on the local and network Physician Compensation Panels and the expected term.
  - 3. Each Physician and Dentist will be provided a written notice of the results of the review, even if the review does not result in a pay adjustment. The VA Compensation Panel form VA 10-0432A will serve as the written notice.
- D. Reconsideration:
  - 1. If a Physician or Dentist believes that his or her tier determination is improper based on the nature of his or her assignment, the employee may submit a request for reconsideration to the official that approved the tier recommendation. The market pay amount authorized by the approving official is a final decision. However, employees may request reconsideration of a tier determination.

2. The request for reconsideration must be submitted in writing within 30 days of the end of the pay period in which the notice was received. The request must cite why the employee believes that his or her tier determination is inappropriate. If the request is referred to a Compensation Panel, the approving official will consider and record his or her decision and copy the employee. If the approving official determines that review by the Compensation Panel is not necessary, the employee will be notified of the decision in writing.

E. Changes in Assignment:

1. Same facility or to a different facility:

- a. If an assignment is involuntary, the Department may offer retention of market pay if a reduction would be against equity and good conscience or against the public interest.

2. Temporary Assignments and Details:

- a. Pursuant to VHA Handbook 5007, individuals temporarily assigned to a position with a different pay range or tier may receive a market pay adjustment after serving in the assignment for 60 days or more. Temporary assignments and details that result in a change in market pay must be documented and may not result in a reduction of an individual's existing market pay rate. Upon termination of a temporary assignment or detail, an individual's market pay is returned to the amount payable prior to the temporary assignment or detail.

F. Change in Duty Status:

When a Physician converts from part-time to full-time, or from full-time to part-time, he or she will retain his or her step on the base and longevity pay scale. However, the market pay and tier are re-evaluated by the Compensation Panel.

G. Notice Requirements:

Physicians and Dentists must be notified in writing when an involuntary assignment in connection with a disciplinary action will result in a reduction in market pay. The notice must be provided at least 30 days in advance of the effective date of the reduction, and include the amount of the reduction, and any appropriate appeal rights with regard to the new assignment.

### **Section 3 – Labor Input into Biennial Review of Pay Ranges**

In accordance with 38 USC 7431(e)(1)(A), the Secretary must prescribe minimum and maximum amounts of annual pay for VHA physicians and Dentists not less than every two years. The Local may provide information and recommendation for physicians and Dentists pay scale.

### **Section 4 – Availability of Data Regarding VHA Physician and Dentist Average Salaries**

Any data concerning bargaining unit physicians and Dentists obtained by VHA for general

distribution or posted on websites will also be made available to the Union upon request.

## **ARTICLE 71 – DISTRIBUTION OF AGREEMENT**

- A. Within 30 days of the effective date of the Agreement, all bargaining unit employees will be notified how to electronically access the Master Agreement. Upon request, the Department will provide a hard copy of the Master Agreement to the employee. In the alternative, the Local can provide a hard copy to the requesting employee.
- B. The Department will initially provide the National with 100 copies and each Local with 100 additional copies of the Agreement. Upon request and with a demonstrated need, additional copies will be provided on an as needed basis.
- C. The Department shall publish this Master Agreement on its website, currently at the VACO office of Labor-Management Relations (LMR) website.  
<http://www.va.gov/LMR/Agreements.asp>

## **ARTICLE 72 – DURATION**

### **Section 1**

This Agreement shall remain in full force and effect for a period of three years from the date of its approval by the head of the Agency or from the 31st day after execution, whichever is sooner. This Agreement will automatically be renewed for three-year periods thereafter unless written notice of a desire to renegotiate the Agreement is served by either party between the 105th and 60th day prior to expiration of the contract.

### **Section 2**

This Agreement is also subject to reopening by mutual consent of the Parties concerned or when new or revised laws or regulations of appropriate authority require changes to provisions of the Agreement and/or if the Parties mutually agree to amend or modify this Agreement. Before reopening, the Party wishing to reopen will submit to the other Party an agenda stating the reasons for reopening and the changes that are desired.

### **Section 3**

Notice under either Section 1 or Section 2 of this Article must come from an appropriate VACO officer or from a NAGE National official.

### **Section 4**

When the renegotiation of this Agreement is pending or in process, and the Parties are unable to complete such renegotiation by the termination date of the Agreement, the terms and conditions of this Agreement shall continue in effect until a new Agreement is effected.

**APPENDIX B – NAGE REQUEST FOR OFFICIAL TIME**

INSTRUCTIONS:	
All Union representatives wishing to use official time will request the time using this form. Specific procedures for requesting, granting and denying official time are addressed in the Official Time Article of the Master Agreement. Representational activity not covered by law or the Agreement shall be performed by the representative during non-duty hours or on approved leave.	
UNION REPRESENTATIVE NAME:	# HOURS REQUESTED: OFFICE/DEPARTMENT:
LOCATION, CONTACT INFORMATION AND ADDITIONAL COMMENTS: (you may continue on back of form)	
CATEGORY	PURPOSE (CHECK ALL THAT APPLY)
OT1	Communicating about matters covered under the Master Agreement with employee(s), other Union officials and Department officials, including Labor-Management Forums
OT2	Preparing and investigating grievances, interviewing witnesses, preparing for arbitration, and meeting with Union representatives in connection with representational activity
OT3	Preparing to represent an employee, and representing an employee, in a statutory appeal process, including replies to the courts or administrative
OT4	Preparing to negotiate over mid-term issues
OT5	Preparing to participate in a FLRA investigation or hearing as a representative of the Union
OT6	Formal discussions
OT7	Representing employees at investigations as set forth in the Investigations Article of this Master Agreement
OT8	Grievance meetings
OT9	Arbitration hearings
OT10	Oral replies to disciplinary and adverse actions and actions based on unacceptable performance
OT11	Participation in mid-term negotiations
OT12	Training on labor-management relations
REPRESENTATIVE NAME:	TITLE:
REPRESENTATIVE SIGNATURE:	DATE:
SUPERVISOR ACTION ON REQUEST: (Circle One)	
APPROVED	
DISAPPROVED (provide	
REASON FOR DISAPPROVAL: (you may continue on back of form)	
SUPERVISOR NAME:	TITLE:
SUPERVISOR SIGNATURE:	DATE:
DEPARTURE TIME:	RETURN TIME:
TOTAL NUMBER OF HOURS APPROVED	

**APPENDIX C  
NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES  
AFFILIATED WITH THE SERVICE EMPLOYEES INTERNATIONAL UNION  
TITLE 38 ASSIGNMENT DESPITE OBJECTION FORM**

The purpose of this form is to notify local management that I have been given an assignment which I believe in my professional judgment is potentially unsafe for the patients and/or staff. This form will document the situation. I will, under protest, attempt to carry out the assignment to the best of my professional ability.

NAME(S) \_\_\_\_\_ DATE & SHIFT: \_\_\_\_\_

UNIT: \_\_\_\_\_

ASSIGNMENT: \_\_\_\_\_

Please complete when appropriate:

NUMBER OF PATIENTS I WAS ASSIGNED: \_\_\_\_\_

ACUITY OF PATIENTS I WAS ASSIGNED (check one)  HIGH  AVERAGE  LOW

MY OBJECTION IS BASED ON THE FOLLOWING: Please check appropriate reason(s)

Not trained or experienced in area assigned  Not given adequate staff for acuity levels, patients one to one

Not given staffing levels to meet needs staffed with unqualified personnel  Not oriented to the unit  Not provided with unit clerk

Transferred/admitted new patient to unit without adequate staff  Staffed with excess relief/agency personnel

Not provided with appropriate ancillary support Was life and/or safety adversely or potentially impacted?  Yes  No

Was incident sheet completed?  Yes  No Break Missed?  Yes  No Working conditions: Meal period missed?  Yes  No

Overtime incurred?  Yes  No Beginning census \_\_\_\_\_ Unit capacity \_\_\_\_\_ # of admissions \_\_\_\_\_ End of shift census \_\_\_\_\_

STAFFING MIX ON DATE OF OBJECTION:

\_\_\_\_\_ : REGULAR \_\_\_\_\_ : FLOAT \_\_\_\_\_ : AGENCY \_\_\_\_\_ :

**OVERTIME STAFF**

REGISTERED NURSES				
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LPN				
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H T/ NA				
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BRIEF DESCRIPTION: (Use reverse side if necessary)

\_\_\_\_\_

In order to obtain additional staffing or assistance the following were contacted:

Nurse Manager \_\_\_\_\_ Date & Time: \_\_\_\_\_

Nurse Officer of the day or equivalent \_\_\_\_\_ Date & Time \_\_\_\_\_

Nurse Executive \_\_\_\_\_ Date & Time \_\_\_\_\_

This form belongs to NAGE/SEIU Local 5000, please return to any local officer promptly. Copies will be forwarded to the appropriate Management Officials.