



**NEGOTIATED AGREEMENT**  
**BETWEEN**  
**NATIONAL INSTITUTES OF HEALTH**  
**AND**  
**LOCAL 572 (LIUNA)**  
**PUBLIC SERVICE EMPLOYEES UNION**  
**AFL-CIO**

**Bargaining Units:**  
**Case No. WA-RP-05-0055-1**  
**and**  
**WA-RP-05-0055-2**

**The effective date of this Agreement is:**

**December 14, 2006**



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## **PREAMBLE**

Pursuant to Title VII of the Civil Service Reform Act (CSRA), 5 U.S.C. 71, and the implementing regulations issued by the Office of Personnel Management, the following Articles constitute an Agreement by and between the National Institutes of Health, DHHS, hereinafter referred to as the Employer, and the Public Service Employees Union, LIUNA, Local 572, AFL-CIO, hereinafter referred to as the Union.

It is the intent and purpose of both Parties to this Agreement to (1) promote and improve the efficient administration of the National Institutes of Health and the major role it plays in the advancement of biomedical research and the nation's health, and the well-being of employees within the meaning of Title VII of the CSRA; (2) further establish a basic understanding relative to personnel policies, procedures and practices and matters affecting other conditions of employment; and (3) provide means for amicable discussion and adjustment of matters of mutual interest at the National Institutes of Health.

## ARTICLE I

### Recognition and Coverage of Agreement

*Section 1.* The Employer hereby recognizes that the Union is the exclusive representative of all employees in the bargaining units defined in Section 2 below, and the Union recognizes its total responsibility for representing the interests of all such employees, without discrimination or regard to employee organization membership or status, and subject to the express and implied limitations set forth in Articles II and III.

*Section 2.* The bargaining units to which this Agreement applies are defined as follows in accordance with the FLRA Case Number. WA-RP-05-0055-1 and WA-RP-05-0055-2:

Included:

1. ***Motor Vehicle Operators*** assigned to the Office of Research Services (ORS), Division of Scientific Services and Instrumentation;
2. ***Motor Vehicle Operators*** assigned to the Division of Logistics Services;
3. ***Store Workers, Material Handlers and Warehouse Workers*** assigned to the Self Service Stores, Division of Logistics, National Institutes of Health, Bethesda, Maryland;
4. ***Supply Technicians*** assigned to the Division of Logistics Services, Bethesda and Gaithersburg, Maryland;
5. All ***Housekeeping Aids***, Clinical Center, National Institutes of Health, Bethesda, Maryland.

*Section 3.* Exclusions from Coverage

The following employees are excluded from the bargaining unit covered by this Agreement in accordance with 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7):

- (A) All management officials as defined in the Statute;
- (B) All supervisors as defined in the Statute;
- (C) Employees who act in a confidential capacity with respect to an individual(s) who formulates or effectuates management policies in the field of labor-management relations;
- (D) Employees engaged in personnel work in other than a purely clerical capacity; and
- (E) Employees engaged in administering the provisions of the Statute.

## **ARTICLE II**

### **Effect of Law and Regulation**

*Section 1.* In the administration of all conditions of employment *specifically* covered by this Agreement, the Parties are governed by this Agreement, existing and future Employer rules, regulations and policies not in conflict with this Agreement, Government-wide rules and regulations, and Federal law.

*Section 2.* In the administration of conditions of employment *not specifically* covered by this Agreement, the Employer agrees, when requested by the Union, to bargain in good faith on the subject of any future Employer rule, regulation, or policy to the extent they are negotiable.

*Section 3.* Before implementing any future rules, regulations and policies that are not specifically covered by this Agreement the agency agrees to bargain to the extent required by law.

## **ARTICLE III**

### **Management Rights**

#### *Section 1. Statutory Rights*

- A. Subject to subsection (B) of this section, nothing in this Agreement shall affect the authority of any management official of any agency —
  - 1. to determine the mission, budget, organization, number of employees and internal security practices of the agency; and
  - 2. in accordance with applicable laws —
    - a. to hire, assign, direct, layoff and retain employees in the agency or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
    - b. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
    - c. with respect to filling positions, to make selections for appointments from —
      - (1) among properly ranked and certified candidates for promotion; or
      - (2) any other appropriate source; and
    - d. to take whatever actions may be necessary to carry out the agency mission during emergencies.
- B. Nothing in this section shall preclude any agency and any labor organization from negotiating —
  - 1. at the election of the agency, on the numbers, types and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods and means of performing work;
  - 2. procedures which management officials of the agency will observe in exercising any authority under this section; or
  - 3. appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

## **ARTICLE IV**

### **Rights of Employees**

#### *Section 1. Compliance with Rules, Regulations, and Agreement*

Rules, regulations, and the provisions of this Agreement should be enforced by management, and employees are expected to comply with them. Where management finds that employee conduct is inconsistent with applicable rules, regulations, or the provisions of this Agreement, management should apprise the employee of what is expected prior to starting to enforce that rule, regulation, or provision of this Agreement.

#### *Section 2. Right to Join or Assist Union*

Pursuant to § 7102 of the Statute, Employees covered by this Agreement shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided in the Civil Service Reform Act of 1978, such rights include 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 heads of Agencies and other officials of the Executive Branch of the Government, the Congress or other appropriate authorities; and
- B. to engage in Collective Bargaining with respect to conditions of employment through the Union as provided by law and this Agreement.

#### *Section 3. Conflict of Interest*

Nothing in this Section, or this Agreement, authorizes participation in the management of a labor organization by a management official, or a confidential employee, except as specifically provided in the Civil Service Reform Act of 1978, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

#### *Section 4. Following Supervisory Orders and/or Instructions*

Employees have an obligation to follow and carry out a supervisor's lawful order and/or instruction(s). Failure to carry out a lawful order and/or instruction(s) may result in disciplinary action up to and including removal.

If there is a disagreement between the employee and the management official, the employee will comply with the instructions and, if desired, grieve the matter later.

An employee who believes that the supervisor's order and/or instruction(s) is unlawful must obey the order or be subject to disciplinary action, and may also do any or all of the following:

- A. Give the supervisor a written statement expressing the employee's objection to the order;
- B. Report the alleged violation to the HHS – Office of Inspector General; or
- C. Verbally inform the supervisor of his concerns.

#### *Section 5. Employees Right to a Representative of Their Choice*

Nothing in this Agreement shall be construed to preclude an employee from:

- A. Being represented by the Exclusive Representative in any grievance appeal action under the negotiated grievance procedure; or
- B. Exercising grievance or appellate rights established by law, rule, or regulation; except for items specifically excluded from the grievance provisions contained in this Agreement.

#### *Section 6. Private Lives vs. Official Duties*

- A. The Agency recognizes that an employee's financial obligations or obligations alleged by any creditor are private matters. In the event of a dispute between an employee and a private individual or firm with respect to an alleged debt or financial obligation, the Agency will not take any action against the employee which is contrary to law, rule, or regulation.
- B. Any NIH official who has authority to take, direct others to take, recommend, or approve any personnel action, shall do so for business reasons and will not violate the law when doing so; further, nothing in this Subsection shall prohibit the Agency from taking into account in determining suitability or fitness, any conviction of the employee for any crime under the laws of any State, the District of Columbia, or the United States.

## *Section 7. Campaigns or Drives — Solicitation of Employees in the Bargaining Unit*

- A. Definition — For the purpose of this Article; solicitation of employees in the bargaining unit means requests for contribution for the Combined Federal Campaign, participation in savings bond drive, blood drive, or other Agency approved solicitations which have been announced in generally published Agency directives.
- B. Participation — Contributions from employees in the Bargaining Unit and participation by employees in the unit to solicit contributions shall be voluntary. There shall be no discrimination against any employee in the unit based solely on nonparticipation or for any level of contributions. An employee in the bargaining unit may be requested to volunteer to solicit contributions. A management or supervisory employee may participate in direct solicitation of employees in the Bargaining Unit which are not under their direct supervision.
- C. Contributions for gifts for supervisors, management officials or fellow employees will be strictly voluntary, as provided by law, rules or government wide regulations.

## *Section 8. Supervision and Assignment of Work*

Consistent with the management's right to assign work to employees and to determine methods and means of performing work, employees can normally expect assignments to be made consistent with grade level, position description, and performance. Employees will usually receive instructions from and make reports through established supervisory/managerial channels as described or depicted in pertinent position descriptions, organizational charts, and directives. Employees in the unit will be informed of whom they are to look to for supervision and performance appraisal.

## *Section 9. Polygraph Tests*

The Agency will not ordinarily request or require an employee in the bargaining unit to submit to a polygraph test. Supervisors have non-reviewable discretion with regards to these matters.

### *Section 10. Personnel Records*

- A. The Official Personnel Folder will be maintained, and retained, in accordance with law, Government-wide regulations, and this Agreement.
- B. Employees may be granted reasonable amounts of time, upon approval of the Supervisor, to:
  - 1. Examine any of the records in their Official Personnel Folder (SF-66). Any documents that are part of an employee's Official Personnel Folder (OPF) or electronic (OPF) and will be available for review upon request of the employee; and
  - 2. Submit to the appropriate Personnel Officer responses to material placed in the records.

### *Section 11. Representation*

Pursuant to §7114(a)(2)(A) and (B) of the Statute, an employee covered by this Agreement shall be given an opportunity to be represented by the Union at:

- A. Any formal discussion between one or more representatives of the Employer and one (1) or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment; or
- B. Any examination of an employee in the unit by a representative of the Employer in connection with an investigation if:
  - 1. The employee reasonably believes that the examination may result in disciplinary action against the employee; and
  - 2. The employee requests representation.

### *Section 12. Searches*

Employees' work areas, lockers, desks, etc. will not be searched without just cause. If a search becomes necessary, the employee may request Union Representation.

## **ARTICLE V**

### **Union Representation**

*Section 1.* The Union is the exclusive representative of the employees in the Bargaining Unit and is entitled to act for, and represent the interests of, all employees in the unit.

*Section 2.*

- A. The Union shall be given the opportunity to be represented at any formal discussion between one (1) or more representatives of the Employer and one (1) or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.
- B. The appropriate Union representative will receive reasonable advance notice of such formal discussions. The Union President and/or his designee will be the official representative at Bargaining Unit level formal discussions.
- C. At any formal discussion, the appropriate Union representative will be identified and has the right to ask questions, comment, speak and make statements related to the subject matter addressed by the Employer at that meeting and shall not seek to take charge of or disrupt the meeting.

*Section 3.* The Union shall be given the opportunity to be represented at any examination of an employee in the unit by a representative of the employer in connection with an investigation if:

- A. The employee reasonably believes that an examination may result in disciplinary action against the employee; and
- B. The employee requests representation.
- C. The Union Representative can not answer questions for the employee or be disruptive during the interview.

*Section 4.* The Union shall have the right to present its views, either orally or in writing, to the Employer on any matters of concern regarding personnel policies and practices, and matters affecting working conditions.

## **ARTICLE VI**

### **Official Time**

#### *Section 1. Definition of Official Time*

For purposes of this Article, “official time” means time expended by the Employer’s bargaining unit employees as Union representatives during normal working hours, without charge to annual leave, and granted by the Employer in accordance with 5 U.S.C. 7131(d). Reasonable amounts of official time may be used for representational purposes, including administration of this Negotiated Agreement and its supplements; attendance at formal meetings; attendance at meetings in which the employee reasonably believes the examination may result in disciplinary or other adverse action and the employee requests representation; reviewing Employer proposals concerning negotiations and changes in policies, practices, and matters concerning working conditions; receiving, investigating, preparing, and presenting grievances; preparing for and participating in negotiations, including work related to the resolution of any negotiability question or of an impasse.

#### *Section 2. Use of Official Time*

Union representatives shall request official time from the Employer and shall be granted the use of reasonable official time for representational purposes unless the granting of official time would interfere with the ability of the Agency to meet work requirements.

#### *Section 3. Designation of Union Officials for Use of Official Time*

1. The Union shall have the right to designate one (1) shop steward and an alternate.
2. The steward and alternate shall be assigned to the same work section; however, in most cases the alternate will be approved official time only in the absence of the primary steward.
3. The Union shall provide the Employer with its initial list of stewards and officers within thirty (30) days of the signing of this Negotiated Agreement. This list may be updated and modified from time to time; changes must be in writing and submitted to the Labor Relations Office. Any changes to the original list will be submitted in writing to the employer before the employee is recognized as having authority to represent the Union or is granted official time for representational duties.

#### *Section 4. Prohibited Use of Official Time*

Official time shall not be permitted, used, or granted for internal Union business, including, but not limited to, the solicitation of membership; the collection of dues; the election of Union officials; the preparation or distribution of Union publications; and discussion of internal Union business in meetings, by telephone, e-mail, or otherwise. Internal Union business shall be performed only during the time the employee is in a non-duty status.

#### *Section 5. Amount of Official Time for Representational Activities*

The Union representative's supervisor will approve official time for representational purposes in amounts that are reasonably necessary to accomplish the purpose for which official time is requested, unless the Union representative's presence is necessary to meet work requirements.

#### *Section 6. Notification Procedures for Official Time Use*

The following procedures shall be followed for requesting the use of official time for representational purposes.

1. Requests for the use and approval of official time shall be made to the Union Steward's immediate supervisor, or designated alternate in the Union Steward's supervisory chain, as determined by the Branch Chief at the earliest reasonable opportunity.
2. The request for official time shall be for a specific period of time, based upon the representative's good faith estimate of the time required to perform the particular function.
3. All requests for official time will be made in advance except in emergency situations, such as a Weingarten meeting called on short notice. The request will be submitted to the Union's Stewards supervisor or designee, using form NIH 2789. See attached addendum #1.
4. In emergency circumstances, where the representative requests approval to leave the work site on short notice, he/she must explain the nature of the emergency; estimate the amount of official time required; obtain the supervisor's or designee's oral approval; and complete form NIH 2789 immediately upon return to the work site.
5. Upon completion of a period of official time that is reasonable and necessary, the Union representative shall promptly report back to work, notify the management official who approved the official time that he/she has returned, and complete Form NIH 2789 to record the actual time used.
6. The supervisor must approve official time before the steward can leave the work area; except under emergency circumstances, refer to Section 6, Item 4.

## **ARTICLE VII**

### **Responsible Labor Management Relations**

*Section 1.* The Union shall not call or participate in a strike.

*Section 2.* The Union shall not picket the Employer in a labor-management dispute if such picketing interferes with the Agency mission. Informational picketing which does not interfere with the Agency mission is permitted.

*Section 3.* The parties agree to communicate in good faith to seek mutual understanding on problems arising under this Agreement or concerning other matters of employee management relations.

#### *Section 4. Meetings*

The Union can request to meet and discuss issues; with four (4) working days notice and a written agenda submitted simultaneously with the request.

#### *Section 5. Conduct of the Meetings*

The Parties agree that IBB principals and practices will be used to resolve disputes. It is recognized that, at times, not all issues can be resolved using this method. Any outstanding issues not resolved using IBB may be referred to traditional methods such as grievance, negotiations, etc. by either Party.

#### *Section 6. Records*

The meeting minutes may be recorded and posted in any locations as determined by both parties. All minutes will be kept for no less than one (1) year by each party. Either party may independently keep the records longer than one (1) year if they so chose.

#### *Section 7.*

Employees attendance at the meetings will be on official time during times which they would normally be in a duty status.

## ARTICLE VIII

### Mid-Term Negotiations

*Section 1.* Where a Party proposes to change a personnel policy, practice, or working condition in which the change is a mandatory subject of negotiation, the following procedures shall apply:

- a. Notice will be provided as early as practicable, but normally not later than fifteen (15) calendar days before the Party plans to implement the proposed change. The Union will have ten (10) calendar days in which to request in writing an opportunity to negotiate and submit its proposals to the Employer. If the Union does not respond in writing within the ten (10) calendar days, the Employer may implement without further negotiation.
- b. The notice will include a description of the proposed change and implementation date.
- c. When a Party timely requests negotiations, the other Party will delay the implementation. In extraordinary situations where a delay beyond the proposed implementation date would create circumstances involving an overriding exigency or unreasonable delay in the exercise of management rights in carrying out its mission, the change may be implemented on an interim basis pending resolution through negotiations, or, if necessary, impasse procedures. The change will be superceded by this negotiated Agreement on the matter, including a return to the *status quo ante*, if directed or agreed. The Parties agree to cooperate in impasse resolution procedures through the Federal Mediation and Conciliation Service and the Federal Services Impasse Panel when timely invoked.

*Section 2.* The following procedures shall govern the conduct of all mid-term negotiations pursuant to this Article:

- a. Negotiations shall take place during regular administrative work days unless otherwise mutually agreed to by the Parties.
- b. The Employer will provide a site for the negotiations.
- c. The Union will be authorized the same number of negotiators as the Employer has designated for its team.

- d. The Union shall request official time for employee Union representatives, if they would otherwise be in a pay and duty status, for time spent in negotiations.
- e. No premium pay time (overtime) shall be afforded to employees to enable them to serve as Union representative for negotiations.

*Section 3.* It is agreed that only the official designated in writing by the Collective Bargaining Official will have the authority to negotiate on behalf of the Employer and only the representative designated by the Union official shall have the authority to negotiate on behalf of the Union. Any agreement by officials not designated in accordance with Section 1 shall be considered non-binding on the Parties.

*Section 4.* If the Union provides timely proposals, bargaining will begin within seven (7) calendar days of the Union's written proposals. The following ground rules will apply to all midterm bargaining entered into as a result of changes and any corresponding obligation to bargain over such changes under 5 U.S.C. 71 of the Statute:

- (1) Unless otherwise agreed to, bargaining will begin at 9:00 a.m. and will end no later than 4:30 p.m.
- (2) Negotiations will be held in a suitable meeting room provided by the Employer.
- (3) Bargaining will be done using Interest Based Bargaining methods.
- (4) During negotiations, the chief negotiator for each party will signify agreement on each section by initialing the agreed-upon section. The chief negotiator for each party will retain his/her copies and initial the other party's copy. This will not preclude the parties from reconsidering or revising any agreed-upon section by mutual consent.
- (5) The Agreement shall not be completed and finalized until all proposals have been disposed of by mutual consent. Negotiation disputes, including questions of negotiability and impasse items, will be processed in a manner consistent with 5 U.S.C. 71 and implementing regulations. This will not serve as a bar to the parties concluding by mutual consent a general agreement on those items which have been or remain to be negotiated.

- (6) It is agreed that no official transcript will be made of the negotiation proceedings. However, each party may make and keep its own notes and records. The negotiation proceedings will not be recorded by means of any tape/electric/electronic recording device.

*Section 5.* The Employer agrees to give full consideration to views expressed by the Union. Exceptions to these time factors may be emergency situations that are beyond the control of the Employer.

*Section 6.* All timeframes under this article may be modified by mutual consent.

*Section 7.* In the administration of all matters covered by this Agreement, officials and employees are governed by existing and future law and government regulations, including policies set forth in the Federal Personnel Manual or its successor. The Parties may reopen by mutual Agreement the contract should a conflict arise between this Agreement and subsequently published regulations.

## **ARTICLE IX**

### **Hours of Work**

*Section 1.* The basic work-week will consist of five eight (8) hour days, normally Monday through Friday except for employees who are assigned other work-weeks deemed necessary by the Employer to carry out the mission of the activity. For all employees not normally assigned to rotating shifts, each workday will consist of an eight and one-half (8½) hour tour of duty, including a one-half hour unpaid lunch period.

*Section 2.* Tours of duty and shifts are established by the Employer. Neither the basic work-week nor regular hours of work will be changed without prior notice to the Union, except in emergency situations, or in circumstances that would seriously handicap the Employer in accomplishing its mission.

*Section 3.* In areas that need continuing services on Saturday and Sunday, a schedule will be prepared by the Employer on a rotating basis so that employees will have as many weekends off as possible. Schedules shall be prepared so that the minimum number of employees is scheduled to work.

*Section 4.* Where special conditions are encountered such as in scheduling work or gaining access to the work site, it is agreed that special work schedules for small groups of employees may be arranged following discussions and notification to the employees concerned and the Union.

*Section 5.* The Employer will make every effort to schedule basic work-weeks so that all employees will have two (2) consecutive days off.

*Section 6.* Employees are authorized the last fifteen (15) minutes of shift, consistent with the nature of work performed, for clean up. Employees are prohibited from departing the work center prior to the end of shift.

*Section 7.* Official unpaid lunch periods for employees of the bargaining unit will be established for each shift and work location by the Employer. All employees will return promptly to their work at the end of the lunch period. Reasonable changes in the lunch period may be made by supervisors to cover emergencies, or to maintain continuity on a project.

*Section 8.* Employees are authorized two fifteen (15) minute breaks each day. A supervisor may delay an employee's break time to complete an urgent work task/assignment. The first break is taken during the first half of the shift and the second break is taken during the second half of the shift.

Employees returning from break after fifteen (15) minutes may be subject to disciplinary action.

*Section 9.* Employees are required to obtain approval from their supervisors before leaving their assigned place of work during duty hours. In emergency situations of short duration, i.e., rest room, etc., where no supervisor is immediately available, the employee will inform a co-worker at the job site of his/her need to leave the job site. Employees absenting themselves from the job site or their assigned duties without authorization may be charged absence without leave (AWOL).

*Section 10.* When excused leave is authorized for NIH employees because of inclement weather, breakdown of equipment or other emergency situations, employees of the bargaining unit who have been notified that they are considered emergency for such situations must report for work unless they have been advised by their supervisor that their services are not needed. Employees on duty whose services cannot be utilized and who are not required to stand by or provide essential services shall be excused in accordance with OPM and NIH policy as prescribed for that situation.

## **ARTICLE X**

### **Overtime**

*Section 1.* Payment of overtime by the Employer is subject to applicable law, regulation and HHS Instruction.

*Section 2.* The Employer will make every reasonable effort to assign overtime fairly among eligible employees. Assignment of overtime will be made in the light of the following considerations — special skills of the employees, familiarity with the work assignment, particular work requirements, consideration of past performance in reporting for overtime, and the wishes of the employees, subject to paramount requirements and the mission of the National Institutes of Health. Whenever possible, overtime assignments will be handled on (1) a volunteer basis, and (2) based on an alphabetical listing in the operational unit within the work unit on a rotational basis, within the framework of the above considerations. If an employee fails to report for a scheduled overtime assignment that employee may be removed from the overtime roster for 45 days.

*Section 3.* The Union agrees that all employees of the bargaining unit must be willing to accept overtime work on short notice in emergencies. The Employer agrees to make every reasonable effort to give employees advance notice before requiring them to work overtime. Employees shall keep the Employer advised of a current address and telephone number where they can be reached in emergency situations. Employee will not be considered for overtime if they cannot be contacted by the employer. The employer will maintain an overtime roster to ensure that overtime is distributed equally among qualified and accessible employees.

*Section 4.* No employee shall be laid off during any regular hours in his/her basic workweek in order to compensate or offset overtime hours worked outside of his/her regular shift or basic workweek.

*Section 5.* An employee called back for unscheduled overtime duty, whether on a workday or a non-workday, will be paid for a minimum of two (2) full hours at his/her overtime rate.

*Section 6.* When work is planned in advance to be performed on an overtime basis on a day other than the basic workweek, the Employer agrees to make a reasonable effort to plan the size of the workforce so as to provide at least four (4) hours of work for each employee. Where the services of each employee are not required for this period of time, such overtime will be paid in accordance with applicable regulations.

*Section 7.* Employees either in training or on detail shall be considered for overtime assignments in the bargaining unit subject to the provisions of Section 2 above.

*Section 8.* An employee called in to work on shifts outside his/her basic workweek shall be promptly excused at such time as it is determined that his/her services are no longer needed.

*Section 9.* In the case of extended overtime in excess of three (3) continuous hours, unpaid meal periods may be scheduled by the supervisor. Break periods shall not be scheduled during overtime work.

## **ARTICLE XI**

### **Safety and Occupational Health**

*Section 1.* The Employer shall make every reasonable effort to provide and maintain safe working conditions and industrial health protection for all employees, using recognized safety precautions as a guide. The Union shall cooperate by instructing and encouraging all members of the bargaining unit to observe safety precautions and to work in a safe manner.

*Section 2.* It is recognized that each employee has a primary responsibility for his/her own safety and obligation to know and observe safety rules and practices as a measure of protection for himself and others. In the course of performing their normally assigned work, shop stewards will be alert to observe unsafe conditions in their immediate areas which represent safety and health hazards. When unsanitary, unsafe, or unhealthful conditions are observed by the steward, it is his/her responsibility to report them at once to the immediate supervisor.

*Section 3.* In addition to the regular training given the employee concerning methods of performing the various tasks of his/her position and the materials and equipment to be used, special attention will be given to identifying hazards that may be involved and instructions in coping with such hazards. When an unanticipated hazard develops in the course of an assignment or when an employee is assigned duties which he/she believes involve special hazards, the employee should contact the appropriate supervisor concerning how to proceed. As appropriate, such factors as proper work methods, the operation of new equipment, and the use of protective safety measures and/or safety equipment should be considered. When employees are required to work under conditions which may be potentially detrimental to health and safety, such conditions will be remedied, insofar as possible and practical, and precautions taken to protect the employee from industrial hazards.

*Section 4.* The Employer agrees to notify the Union prior to implementing any regulations or policy concerning working conditions, safety and health, unless the regulation or policy is directed by or implemented by higher authority (HHS, Government-wide, or law), or emergency conditions preclude notification to the Union.

*Section 5.* The Employer will welcome at any time, from an individual employee or from the Union, suggestions which offer practical and economically feasible ways of improving safety conditions. The appropriate Union steward may meet with the Employer's representative without loss of pay

or leave upon request at a mutually agreed to time, or when an emergency is known to exist, to consider safety problems and to make recommendations upon requesting official time.

*Section 6.* Injured employees will report injuries, no matter how slight, to the supervisor, immediately, but in all cases, before leaving the work site or the shift during which the injury occurred. The employee shall also make a written report on OWCP form CA-1 within 30 days after the injury. When an employee on duty requires treatment away from the activity because of occupational accident or occupational sickness, the Employer will provide the employee transportation to a facility for treatment on the day that the accident or illness occurs. Further, the applicable provisions of the Workman's Compensation Act, as administered by the Department of Labor, will be made available to the employee. The Employer will assist the employee in filing all necessary forms.

*Section 7.* When the Union has been designated by an employee as his/her representative in the matter of a Workman's Compensation case, the Employer will make available to the Union, upon request, all records and information which may be authorized to be released, pertaining to the case.

*Section 8.* When the Employer has made a determination that the need exists and requires the use of special equipment, the wearing of uniforms, protective clothing or special wearing apparel to protect the employee, the environment, or as a means of identification, these specified items will be provided by the Employer. Special equipment, uniforms, protective clothing or special wearing apparel must be used and/or worn as prescribed by the Employer.

*Section 9.* Employees are responsible for the cleanliness of their immediate work area and any break area which they may use.

*Section 10.* In those instances in which a single employee must work alone either because of an emergency or because the type of work does not require more than a single person, and the work location is isolated, then management will make appropriate arrangements to check with the employee periodically, via radio and visual check.

*Section 11.* During cold weather, if work must be performed outside, Employer will provide protective clothing which will include, but is not limited to, insulated uniforms or coat, boots, and gloves.

*Section 12.* The Employer reserves the right to evaluate and determine the need for safety shoes and if issued, employees are required to wear them while on duty.

*Section 13. Tobacco Free Environment:* This policy is designed to protect the health and safety of employees and visitors to NIH facilities. The parties recognize that individuals have the right to have an environmentally safe work environment, which includes the right to smoke and tobacco-free conditions.

- A. Definition — Tobacco use is defined as a cigar, cigarette, pipe, or any other form of lit or oral use tobacco product.
- B. Policy — Tobacco use is prohibited in all owned or leased NIH facilities, campuses, vehicles, and motorized equipment.
- C. Vacancy Announcements — All vacancy announcements shall include a statement that Tobacco use is not allowed in NIH occupied space, facilities, NIH Campuses, vehicles, and motorized equipment.
- D. Compliance — An employee's failure to abide with this article or NIH policy may be subject to discipline.

## **ARTICLE XII**

### **Medical Qualifications and Determinations**

#### *Section 1. General*

The Agency will follow law, applicable government-wide regulations, and this Article in all medical examinations related to an employee's ability to perform their official duties.

#### *Section 2. Prerequisite Conditions*

When there are reasonable grounds to believe that a health problem is causing performance or conduct problems of an employee, the employee shall be given an opportunity to provide medical evidence documenting the health problem affecting their performance or conduct and/or an opportunity to voluntarily request reasonable accommodation or initiate an application for disability retirement on their own behalf.

#### *Section 3. Counseling*

When the Agency determines that the performance or conduct of an employee may be health-related, the employee may be encouraged to seek counseling through the Employee Assistance Program.

#### *Section 4. Accommodations*

When the results of a medical examination reveal that the employee cannot satisfactorily perform their regularly assigned job, the Agency will consider reasonable accommodation for the employee under the applicable regulations and Agency policy regardless of whether or not the injury or medical condition occurred on or off the job. The Agency will offer accommodation provided it does not pose undue hardship.

*Section 5.* All medical records shall be considered sensitive and will be maintained and used in accordance with the applicable provisions of 5 CFR 339.

## **ARTICLE XIII**

### **Annual Leave**

*Section 1.* The Parties agree that employees shall earn annual leave in accordance with applicable laws and regulations. However, it is the prerogative of the Employer to make the final decision on when leave is to be used. For this reason, the use of annual leave is subject to the prior approval of the appropriate leave approving official. Retroactive approval may be given where circumstances warrant. It must not be assumed, however, that a mere report of absence will necessarily result in favorable action. Failure to secure the proper approval from the leave approving official may result in the period being charged to absence without leave. In those organizational areas where SF-71s will provide a more efficient and effective method of timekeeping, all employees of the bargaining unit will be required to submit requests for leave on the SF-71. Where this is required, all employees of the bargaining unit will be so notified.

*Section 2.* Subject to workload and manpower requirements of the agency, the Employer agrees to approve an employee's use of accumulated annual leave, provided the employee requests approval from the leave approving official with reasonable advance notice. If the request is denied the leave approving official will promptly notify the employee of his reason for disapproval. It is agreed that numerous requests by an employee for unscheduled leave which disrupts work schedules or inconvenience other employees may be subject to disapproval.

*Section 3.* The Employer agrees to schedule annual leave for eligible employees for vacation purposes, normally of two weeks duration, after March 1 of each year. Schedules for use of such annual leave will be constructed on the basis of employee preference, and workload and skill needs of the bargaining unit. Conflicts in employee preference will be resolved on the basis of length of services in the bargaining unit, i.e., employees with greater length of service in the same organizational area of a bargaining unit will be given priority. An employee will not be permitted to change his selection if it disrupts the selection of another employee unless the latter is agreeable thereto.

*Section 4.* It is agreed that employees must apply in advance to the leave approving official for approval of anticipated annual leave. Employees are encouraged to submit requests for vacation leave, normally of two (2) weeks duration.

*Section 5.* Once an employee has been afforded leave during prime vacation time, he will lose preference for this purpose until all employees

in the organizational area of the bargaining unit have had an opportunity to schedule two weeks leave during prime vacation time. (Prime time is considered from Memorial Day through Labor Day and the week between Christmas and New Years).

*Section 6.* Unscheduled leave reasons should be requested in person or by phone by the employee. The requests will be considered on their individual merits.

*Section 7.* An employee requesting unscheduled leave will be required to explain the reason for his request. The reason should be in sufficient detail to permit the designated leave approving official to make a judgment, without any invasion of employee's privacy. The leave approving official may withhold final approval of emergency leave pending the submission of the requested information. Any evidence submitted will be treated confidentially.

*Section 8.* If the employee fails to request leave in the proper manner or requests unscheduled leave but does not give adequate justification of his absence, he/she will be carried as AWOL for payroll purposes until he returns to duty and the case is reviewed and decided.

*Section 9.* Requests for unscheduled leave must be made to the office of the designated leave approving official during the two hours prior to the scheduled tour of duty, or as soon as possible thereafter.

*Section 10.* It is agreed that any employee who fails to request leave in the required manner will be earned AWOL pending a review and disposition of the case.

*Section 11.* It is understood that the number of approved requests for unscheduled annual leave must be held to a minimum because of the effect on essential operations and inconvenience to other employees who must be required to serve as substitutes.

*Section 12.* No leave approving official will place an employee who is on duty on any type of leave without notifying the employee.

*Section 13.* The Employer will make every attempt to grant 8 hours of annual leave to an employee on his/her birthday. Leave for this purpose must be requested the same way as any other annual leave request.

*Section 14.* The Employer will make every effort to grant employees' requests for annual leave for holidays associated with their religious faiths.

## ARTICLE XIV

### Sick Leave

*Section 1.* Employees will earn sick leave in accordance with applicable law, rules, and regulations. Organizations using the SF-71 (Application for Leave) for recordkeeping will notify all Employees of the bargaining unit that they are required to submit requests for leave on the SF-71. Sick leave will be charged in one quarter ( $1/4$ ) hour increments. The Parties recognize the importance of sick leave and the obligation of the employee, as well as the advantage to the employee to utilize it only when incapacitated for duty by sickness, injury, or other valid reasons. The Parties agree to jointly encourage employees to conserve such leave so that it will be available to the employees in the event of an extended illness.

*Section 2.* Approval of sick leave will be granted to employees when it is determined they are incapacitated for performance of their duties such as sickness, injury, or pregnancy. Sick leave is also appropriate when requested in advance for medical, dental or optical examination or treatment and will normally be granted. The employee will request the sick leave at least one week in advance if the employee has that much notice of the examination or treatment. Sick leave will also be approved when as determined by health authorities having jurisdiction or by a health care provider that the employees presence on the job would jeopardize the health of others because of exposure to a communicable disease.

#### *Section 3.* Unscheduled Sick Leave Procedures

Where unscheduled sick leave is requested the following procedures will be followed:

- A. If the need arises while the employee is at work, the employee shall notify the Supervisor of the nature of the illness, the anticipated extent of their absence, and seek the Supervisor's approval for sick leave or leave without pay;
- B. If the employee is unable to report for duty due to an illness or other acceptable medical emergency, they must notify their supervisor prior to the beginning of the shift. Where the employee's supervisor is not normally available, the employee must contact the supervisor within the first hour of the start of the shift, if possible; or
- C. Situations that prevent the employee from being able to call will be addressed on a case-by-case basis. This would include

instances where the employee is incapacitated and unable to call. In these instances, the supervisor will accept calls from an alternate provided the person identifies himself/herself and he/she can provide the information required. In these cases medical documentation will be required.

#### *Section 4. Documentation to Support Absences*

An employee shall not normally be required to furnish a doctor's certificate to substantiate requests for approval of sick leave unless such sick leave exceeds three working days of continuous duration. Absences of three (3) days or less may be self certified by the employee by submitting an SF-71, except in individual cases where an employee has been placed on Special Leave Procedures or the leave approving official has reason to question the validity of the sick leave request. Medical certificates must be submitted upon return from sick leave.

#### *Section 5. Chronic Conditions*

Employees who are suffering from a chronic condition which may require the use of unscheduled sick leave on a regular and recurring basis, must establish the chronic nature of their illness with medical documentation. The documentation shall indicate how often it is anticipated that the employee may be incapacitated by the chronic condition and the likelihood that the condition may or may not continue and/or its expected duration. In those instances, the employee will not normally be required to provide medical documentation for additional sick leave usage, related to the chronic condition.

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

An employee may request up to 240 hours advanced sick leave. Advanced sick leave approval/disapproval will be at the appropriate level. Employees on Special Leave Procedures may or may not be granted advance sick leave. For other employees advanced sick leave will be given when all of the following conditions are met:

- A. The employee is eligible to earn sick leave;
- B. There is no reason to believe the employee will not return to work after having used the leave;
- C. The employee has provided acceptable medical documentation of the need for advanced sick leave; and

- D. There is reason to believe that the employee will accrue enough sick leave to pay the advance back.

*Section 7. Confidentiality*

The employer will treat as confidential any medical information related to the employee in support of a request for sick leave. The Employer may disclose such information subject to its Privacy Act obligations for work related reasons on a need to know basis only.

## **ARTICLE XV**

### **Leave Without Pay**

*Section 1.* Employees may be granted leave without pay in accordance with applicable laws and regulations. Leave without pay shall not exceed a period of one (1) year for each application. Leave without pay shall only be granted for the following circumstances:

- a. Employees in the Union who are elected or appointed as a delegate to a Union convention or other Union function.
- b. Employees in the Union who are elected or appointed to a full-time Union office.
- c. For educational purposes.
- d. Employees who have filed for disability retirement or pending action of a claim to the Department of Labor, Office of Workers Compensation.
- e. Employees that are covered under FMLA.

*Section 2.* Employees may be granted annual leave, when available, in lieu of leave without pay. Such requests for leave must be in writing and submitted in advance to allow for a timely decision. The amount of leave and the time at which it may be granted must be in the interest of the government and must be compatible with the overall manpower needs of the employer.

*Section 3.* In accordance with applicable laws and regulations, employees returning from leave without pay shall not lose any rights.

## **ARTICLE XVI**

### **Family Leave**

Requests for leave under this Article must specify if the leave requested is FMLA or FEFFLA and will be in writing in advance when possible. Use of the SF-71 is an acceptable method of written request.

#### *Section 1. Family and Medical Leave Act of 1993*

- A. Pursuant to the Family and Medical Leave Act (FMLA) and its implementing regulations, an eligible employee who has completed at least twelve (12) months of service as an employee shall be entitled to a total of twelve (12) administrative work-weeks of leave without pay (LWOP) during any twelve (12) month period for one or more of the following reasons:
  - 1. The birth of a son or daughter of the employee and the care of such son or daughter;
  - 2. The placement of a son or daughter with the employee for adoption or foster care;
  - 3. The care of a spouse, son, daughter, or parent of the employee who has a serious health condition; or
  - 4. A serious health condition of the employee that makes the employee unable to perform the essential functions of their position.
- B. If leave taken under this Act is foreseeable based on an expected birth, placement for adoption or foster care or planned medical treatment, the employee shall provide notice to Management of their intention to take leave not less than thirty (30) days before the date the leave is to begin. If the date of the circumstances requires leave to begin within thirty (30) days, the employee shall provide such notice as is practicable.
- C. An employee can substitute accrued annual or sick leave, consistent with current laws and regulation, for any part or all of the twelve (12) week unpaid leave entitlement.
- D. If the need for leave taken under this Act is foreseeable based on planned medical treatment, the employee shall consult with Management and make a reasonable effort to schedule medical treatment so as not to unduly cause disruption to the operations of the unit, subject to the approval of the health care provider.

- E. An employee may be required to provide acceptable medical documentation as provided by the law.
- F. An employee who takes FMLA leave is entitled to continue their health benefits coverage. An employee may pay the employee share of the premiums on a current basis or pay upon their return to work.
- G. An employee who takes FMLA leave is entitled to be returned to the same or equivalent position, with equivalent benefits, pay status, and other terms and conditions of employment.

### *Section 2. Federal Employees Family Friendly Leave Act of 1994*

- A. Pursuant to the Federal Employees Family Friendly Leave Act (FEFFLA) and its implementing regulations, employees may use sick leave in order to:
  - 1. Provide care for a family member who is incapacitated as a result of physical or mental illness, injury, pregnancy, or childbirth;
  - 2. Provide care for a family member as a result of medical, dental, or optical examination of treatment; or
  - 3. Make arrangements necessitated by the death of a family member or attend the funeral of a family member.
- B. A covered full-time employee may use up to 104 hours of sick leave each leave year for these purposes in accordance with the law.
- C. Part-time employees may also use sick leave for these purposes. The amount of sick leave permitted under the Act is prorated in proportion to the average number of hours of work in the employee's scheduled tour of duty each week.
- D. A family member is defined as:
  - 1. Spouses, and parents thereof;
  - 2. Children, including adopted children and spouses thereof;
  - 3. Parents;
  - 4. Brothers and sister, and spouses thereof; and
  - 5. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- E. An employee may be required to provide acceptable documentation as provided by the law.

## **ARTICLE XVII**

### **Miscellaneous Leave**

#### *Section 1. Court Leave*

- a. Court Leave will be granted in accordance with the following Court Leave Guide from the PPM Supplement 990-2.
- b. Pay for work time lost shall be computed at the employee's regular rate of pay, including all applicable premium pay, at the time of such absence.
- c. If a second or third shift employee serves on jury duty or as a witness as stated above, he/she shall not be required to work his/her shift on such calendar days, but shall be entitled to pay as provided above.

#### *Section 2. Voting*

- a. Eligible employees will, where polls are not open at least three (3) hours either before or after their regular hours of work, be granted a sufficient amount of excused leave for the express purpose of voting, so as to allow them time to report for work three hours after the polls open or to leave work three hours prior to closing of the polls, whichever requires lesser time.

#### *Section 3. Administrative Leave*

- a. The Office of Personnel Management is responsible for making decisions on temporary closings, late arrivals, early dismissals, and/or liberal leave based on emergency situation (usually hazardous weather) or other administrative situations. When the Federal Government is closed for the day, employees are excused from duty without charge to leave, except for "emergency" employees.
- b. Since the employer is responsible for the care of patients and support for patients, these functions must be continued regardless of the temporary closing of the work place. Certain employees are considered "emergency" and are expected to report or remain at work during the temporary closing. These employees will be notified annually in writing that they are designated "emergency." This notice will outline the requirements for essential employees

to report to or remain at work during an emergency situation unless they are instructed otherwise. Media announcements regarding closings do not apply to employees designated as “emergency.”

- c. In some cases employees may be required to report to, or remain at work during emergency situations (e.g., fires, floods, storm damages, water shortages, major power failures, etc.). The employer will establish a procedure for notifying an employee if they are required to report to or remain at work.

#### *Section 4. Blood Donations*

- a. Consistent with NIH policy, absence from duty without charge to leave of any kind may be permitted for employees donating blood at the NIH Blood Bank.
- b. An official with delegated authority (to grant leave) may approve excused absence for an employee who is donating blood without compensation for a reasonable amount of time for purposes of donation and recovery, normally two (2) hours. Additional time may be excused if appropriate because of the location of the donation site, the type of donation program (e.g., donation of blood platelets) or other factors determined by leave-approving officials.

## **ARTICLE XVIII**

### **Special Leave Procedure**

*Section 1.* Whenever an employee's attendance record is considered unsatisfactory due to unauthorized absences or frequent requests for emergency leave (annual leave, sick leave, LWOP) he/she may be required to follow prescribed procedures to support all requests for leave. This may occur even though approval of previous individual leave requests may not have been withheld when considered by themselves at the time of submittal. The employee will be given a statement in writing serving as notice that certain prescribed procedures for granting leave will be followed. It is agreed that Special Leave Procedures are an attempt to aid employees in establishing appropriate leave use, and it is not an adverse or disciplinary action. As such, the placement of an employee on Special Leave Procedures may be used as a basis for future adverse or disciplinary action.

*Section 2.* No employee shall be given a written notice placing him/her on special leave procedures without prior discussion of the reasons for such action and given an opportunity to improve their record. No employee will normally be placed on Special Leave Procedures unless the leave abuse as described in Section 1 meets or exceeds as a general guide six (6) incidents within a six (6) month period. Each employee's individual case must be based on its own merits and evidence.

*Section 3.* The record of each employee on Special Leave Procedures will be reviewed for no more than four (4) months following the date of the letter imposing the Special Leave Procedures. Upon review of the case the employee will be notified in writing of the decision for continuance or discontinuance of the Special Leave Procedures. If there are no occurrences of abuse within the four (4) month period, the employee may be relieved of the requirement to follow Special Leave Procedures. Special Leave Procedures will continue in effect until such written notification is received.

## ARTICLE XIX

### Tardiness

*Section 1.* Employees who are not ready for work at the start of their scheduled tour of duty or after breaks or lunch periods will be treated as follows:

- a. In an isolated instance of tardiness of less than one (1) hour, where the excuse is acceptable to the supervisor, the tardiness may be excused in accordance with applicable regulations. Where the tardiness is in excess of one (1) hour and the reason for the tardiness is acceptable to the supervisor, the employee will be charged the appropriate leave.
- b. In the case of tardiness where the excuse is not acceptable to the supervisor, the period of tardiness will be treated as absence without leave (AWOL).

*Section 2.* When an employee is tardy two (2) times, without reasonable prior notification, in any 60 day period, the supervisor shall advise the employee that future tardiness will be treated as absence without leave (AWOL) regardless of the nature of the excuse. In such cases of excessive tardiness, the supervisor will advise the employee, in writing, of the possible consequences, including disciplinary action, if the punctuality habits are not improved.

## **ARTICLE XX**

### **Holidays**

*Section 1.* Employees shall be entitled to all holidays in accordance with applicable laws and Executive Order.

*Section 2.* Employees working on a holiday shall be paid holiday pay, shift differential, and/or overtime in accordance with applicable laws and regulations.

*Section 3.* Tours of duty shall not be established or modified solely for the purpose of avoiding the payment of holiday pay.

*Section 4.* It is agreed that as the mission of the Agency dictates, employees may be required to work on holidays.

## **ARTICLE XXI**

### **Position Classification**

*Section 1.* An employee will be provided with a copy of their position description when he/she reports for duty in the position and when changes are made in the position description. A copy of his/her position description will be made available to any employee in the bargaining unit within 24 hours of an oral or written request.

*Section 2.*

- A. An employee has the right to appeal the classification of their position at any time.
- B. When the classification of a position results in the reduction in grade or pay of an employee, the employee may appeal to the Merit Systems Protection Board under such regulations as the Merit Systems Protection Board may prescribe.

*Section 3.* An employee may file a classification appeal directly or designate in writing a representative to process their appeal for him.

*Section 4.*

- A. A General Schedule (GS) employee may file a classification appeal directly with the Office of Personnel Management or through the Appeals Procedure established by the Agency.
- B. A Prevailing Rate (WG) employee may file a classification appeal directly with the Office of Personnel Management only after appealing through the Appeals Procedure established by the Agency.

*Section 5.* The following steps explain the process for employees wishing to file a classification appeal:

Step 1. Agency Appeals Procedure (WG employees must file their appeal at this step first. GS employees may choose to utilize this Step, or may go directly to Step 2.)

- A. The appeal must be made in writing and forwarded to the Director, OHRM, NIH, or designee.
- B. The appeal must contain the following information:
  - 1. Organizational location of the position;

2. Title (or requested title), series and grade;
  3. Reasons why the position is believed to be incorrectly classified; and
  4. A statement of any relevant circumstances, information, or classification standards which have a bearing on the appeal.
- C. An appeal decision will be provided to the employee following a reasonable investigation and evaluation period not to exceed thirty (30) days. If no decision is rendered within this time frame, the employee may proceed directly to step 2.
- D. Appeals will be canceled:
- (1) Upon the written request of the appellant;
  - (2) When the appellant vacates the position being appealed unless there is the possibility of a retroactive benefit; or
  - (3) On failure to prosecute, when the appellant does not furnish requested information and duly proceed with the advancement of their appeal.

Step 2. OPM Classification Appeals Procedure (GS employee may file directly to this Step)

- A. OPM Classification Appeals should be filed with OPM, pursuant to OPM regulations at
- (1) GS employees: subpart F of part 511 of title 5, Code of Federal Regulations.
  - (2) WG employees: subpart G of part 532 of title 5, Code of Federal Regulations.

*Section 6.*

- A. Office of Personnel Management appeals decisions are final and binding upon the Agency.
- B. The final classification determination of an appeal will be effected no later than the beginning of the second full pay period following the receipt of the decision.

*Section 7.*

- A. An employee who has filed a classification appeal shall be entitled to a Union Representative, if requested, at any desk audit or meeting with any agency representative concerning the appeal.
- B. An employee who has filed a classification appeal shall not be subject to any penalty, reprisal, discrimination, or harassment because he has filed such an appeal.
- C. For the purposes of this section a grade reduction as a result of a classification appeal is not considered a penalty, reprisal, discrimination, or harassment.

*Section 8.* Each position which has the same level or grade controlling duties and responsibilities will be classified at the same grade level in accordance with applicable law, rule, or government wide regulation.

*Section 9.*

- A. Except as set forth in the Agency appeals process and OPM Classification Appeals Procedures, above, the procedures set forth in this Article are the sole procedures for processing classification appeals.
- B. All complaints that are not classification appeals as defined by Federal Labor Relations case law are subject to the grievance and arbitration procedures.

## **ARTICLE XXII**

### **Merit Promotion**

#### *Section 1. Preamble*

The purposes and intent of this Article are to ensure that employees are given full and fair consideration for advancement and to ensure selection from among the best qualified candidates. The Agency and Local 572 agree to fill positions in the bargaining unit on the basis of merit in accordance with systematic and equitable procedures adopted for this purpose.

#### *Section 2. Introduction*

- A. *Statement of Objectives.* The statement of objectives and the principles governing merit promotion in the NIH Merit Promotion Plan are hereby incorporated into this Article by reference. The Parties specifically affirm the goals of maximum utilization of employees, of the necessity of providing incentives for improved performance, and of the need to deal fairly with employees, while avoiding undue delays and unnecessary paperwork.
- B. *Exceptions to Merit Promotion.* Competitive merit staffing procedures apply to all personnel actions to fill positions in the competitive service in the bargaining unit, except as otherwise indicated below.
  - 1. Promotions Excepted from Competitive Merit Promotion Procedures.
    - a. Upgrading as result of new classification or new classification standard.
    - b. Career ladder promotions.
    - c. Promotion under approved training Agreement.
    - d. Re-promotion after demotion without personal cause.
    - e. Temporary promotions not to exceed 120 days.
    - f. Promotion required by law, regulation, or as a remedy or voluntary settlement reached in connection with a grievance complaint, or appeal.
  - 3. Other Actions Excepted from Competitive Merit Promotion Procedures.
    - a. Reassignments provided the reassignment is not to a position of greater known promotion potential.

- b. Reassignments under an approved training Agreement to the target position.
- c. Demotions to positions of no greater promotion potential.
- d. Details not to exceed 120-days within one year to higher grade positions.

### Section 3. Definitions

- A. *Entrance-Level Position* — Entrance-level position is the lowest grade of the position.
- B. *Positions with Known Promotion Potential* — Positions with known promotion potential include:
  - 1. Career ladder positions below the level of full performance;
  - 2. Positions filled at a grade below the established or anticipated grade; and
  - 3. Trainee positions.

*Career Ladder* — A career ladder is a series of positions of increasing difficulty in the same line of work through which a group of employees may progress from the entrance levels to the first level of full performance. They are all given grade-building experience and are promoted as they demonstrate ability to perform at the next higher level.

- C. *Full-Performance Level* — The grade level in an occupational career ladder to which the employee has noncompetitive promotion potential based on satisfactory ability to perform at that level.
- D. *Apprenticeship-Trainee Position* — An apprenticeship-trainee position is one involving a well defined training program (which includes both on-the-job and classroom training) of a definite duration, and the performance of assigned tasks on a rotating or non-rotating basis under close guidance and instruction with promotion scheduled upon satisfactory completion of the training period.
- E. *Detail* — A detail is the temporary assignment of an employee to a different position for a specified period, with the understanding that the employee will be returning to their regular duties at the end of the detail. Employees detailed to the next higher grade for 15 days or more should be given consideration for a

temporary promotion to the higher grade starting from the first day of the detail.

- F. *Advertising* — Advertising is the timely posting of vacancy announcements through USAJobs, or other web based source that the agency determines is appropriate.

#### *Section 4. Locating Candidates and Publicizing Vacancies*

Agency candidates shall be normally located through advertising. No position in the bargaining unit, except those specifically excepted herein from merit promotion competition, will be filled except as a result of the advertising for the particular vacancy or vacancies.

- A. *Vacancy Announcement* — A vacancy announcement shall be used in advertising and shall include the following information about the position to be filled.
1. Title and grade
  2. Geographic and organizational location
  3. Summary statement of duties
  4. Knowledge, Skills, and Abilities (KSAs) or Job Elements
  5. Qualifications (including any special qualification requirements)
  6. Where applications and required forms should be sent
  7. Where additional information may be secured
  8. Vacancy announcements shall be open based on the determinations and need of the agency
  9. If the position to be filled is one with known promotion potential, this shall be explained in the announcement
  10. Salary Range/Grade
  11. Whether any special requirements or conditions exist
  12. NIH is an equal opportunity employer
  13. Area of consideration
- B. *Announcement of Entrance Level Positions* — Vacancy announcements of entrance level positions and those for which sustained recruitment outside the Agency is the practice, shall be issued or posted periodically.

- C. *Open Announcements* — At the option of management, announcements may be open for up to one (1) year for positions for which it appears there will be a number of vacancies over a period of time. Upon request, vacancy announcements will be made available to the union.

## *Section 5. Review of Merit Promotion Actions*

### *A. Notification*

Each employee will automatically be notified in writing by the appropriate personnel office as to whether an application was received and whether selected/non selected for a vacancy for which he/she applied.

### *B. Review and Explanation*

1. If a vacancy cannot be filled for any reason, or management has decided not to fill or to cancel the vacancy announcement, once a list of candidates has been certified for the vacancy, the agency will give an employee who has made inquiry under this Section or their designated representative the reason why the position cannot now be filled.
2. A Merit Promotion Plan vacancy announcement shall not be canceled for the purpose of avoiding conformance with the merit promotion plan or this Agreement. Nothing in this agreement shall abridge management's right to select the best candidate.
3. Upon request, the Personnel Office will advise Local 572 of the official with authority for a specific personnel action.

## **ARTICLE XXIII**

### **Temporary Promotions and Details**

*Section 1.* It is agreed as a matter of principle that employees should be paid at rates commensurate with the duties to which they are assigned (equal pay for equal work).

*Section 2.* If an employee is absent for a period of time, his/her duties may be assigned to another employee of any grade level. When an employee is assigned to higher grade duties and the assignment is anticipated to last 15 days or more pay periods, the employee should be given consideration for a temporary promotion. Such assignments for less than 15 days may be covered by detail in accordance with applicable regulations.

*Section 3.* Employees selected for temporary promotions must meet the requirements for basic eligibility in accordance with applicable regulations of the Office of Personnel Management. They need not however, be selected under competitive promotion procedures unless the promotion is for more than 120 days.

*Section 4.* Temporary positions that are expected to last more than 120 days will be advertised and filled using competitive selection.

*Section 5.* The use of repetitive 120 days or less (noncompetitive temporary promotions) will not be utilized to avoid merit procedures, or the requirements of Section 4 above.

*Section 6.* Employees may be detailed, in accordance with applicable regulations, between specialized position categories to take care of situations such as temporary workload imbalances or to prevent the need for reductions in force.

*Section 7.* Upon termination of a temporary promotion, the employee will be returned to the position from which he/she was promoted, at the pay rate to which he/she would have been entitled had he/she not received the temporary promotion.

*Section 8.* A temporary promotion may not be made solely:

1. For training or evaluation of an employee in a higher-graded position;
2. To give an employee a trial period before permanent promotion;
3. To decide among candidates for permanent promotion; or,
4. To train an employee in higher-grade duties.

## **ARTICLE XXIV**

### **Equal Employment Opportunity**

*Section 1.* The Parties agree that they will abide by the laws in regards to assure that all employees have equal employment opportunities and that no one is discriminated against because of race, color, national origin, age, sex, marital status, religion, or membership in a labor organization.

#### *Section 2.* Sexual Harassment

- A. The Agency and the Union recognize that sexual harassment is a form of misconduct which undermines the integrity of the employment relationship and adversely affects employee opportunity. All employees must be allowed to work in an environment free from unwelcome sexual overtures. Therefore, the Parties mutually agree to identify and work to eliminate such occurrences.
- B. Unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature constitute sexual harassment when:
  - 1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment decisions affecting such individual; or
  - 2. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

#### *Section 3.* Complaint Processing

- A. The Agency agrees to carefully, justly, and expeditiously consider and adjudicate complaints of discrimination filed through the EEO administrative complaint process or the negotiated grievance procedure. The Agency and Local 572 agree to cooperate in attempting to bring about informal resolution of complaints.
- B. Persons who allege discrimination or who participate in the presenting of such complaints will be free from restraint, interference, coercion, discrimination, or reprisal.
- C. An employee may raise a complaint of discrimination through the Department's EEO administrative complaint process or through the negotiated grievance procedure, but not both. An employee

shall be deemed to have exercised this option when the matter that gave rise to the allegation of discrimination is made the subject of a timely filed grievance or formal EEO complaint, whichever event occurs first. Consultation with an EEO counselor pursuant to 29 C.F.R. 1613.213 does not constitute filing a formal EEO complaint.

- D. Under the EEO administrative complaint process, a complainant has the right to be accompanied, represented, and advised by a representative of their choosing at any stage of the complaint process, except where there is a conflict of interest or position.
- E. If any remedial or corrective actions are to be taken as the result of informal or formal resolution of EEO complaints filed under the EEO administrative complaint process, and such actions trigger an obligation to bargain, then, the Agency will fulfill its bargaining obligation under the Statute.

## **ARTICLE XXV**

### **Contracting Out**

*Section 1.* The Employer will notify and consult with the Union concerning contracting out of work that may adversely affect bargaining unit employees. Such notification will take place when a determination is made by the Employer. When considering the contracting out of bargaining unit functions, the Employer will rely upon the Government's general policy, as established by higher authority, which reflects the fundamental concept that the Government should generally perform only those functions which are governmental in nature and should utilize the competitive incentives of the private enterprise system to provide services which are necessary to support governmental functions. The agency agrees to bargain to the extent required by law.

## **ARTICLE XXVI**

### **Reduction-in-Force**

#### *Section 1. General*

- A. This article governs:
  - 1. The separation, demotion, reassignment requiring displacement of another employee, or furlough for more than thirty (30) calendar days of bargaining unit employee(s) by reduction in force from their respective levels.
- B. This article concerns the impact and implementation of the government-wide regulations on reduction in force (RIF), which may occur during the life of the Agreement. Reductions in force will be accomplished in accordance with statutory requirement, civil service rules and regulations, and this Agreement.
- C. No reduction in force action may be taken until every position in the affected competitive area is assigned to a competitive level.

#### *Section 2. Notification*

- A. *Preliminary Notification to Local 572 of Reduction in Force or Transfer of Function*
  - 1. When it is anticipated that transfer of function out of the commuting area or reduction in force affecting bargaining a unit employee(s) will be necessary, Local 572 will be given preliminary notification in writing. This notification will be given as soon as practicable, but no less than fifteen (15) calendar days, after the determination by management that a RIF or transfer of function (TOF) is necessary.
    - a. The reason for the reduction in force or transfer of function;
    - b. The approximate number of employees who may be affected initially;
    - c. The competitive areas and level that may be involved initially in a reduction in force; and
    - d. The anticipated effective date that action will be taken.
  - 2. Management will fulfill any bargaining obligation, to the extent required by the law, which arises as a result of a RIF or TOF.

## B. *Notice to Employees*

1. Affected employees will be given a specific notice in writing no less than sixty (60) calendar days prior to the implementation date of a reduction in force or transfer of function out of the commuting area unless circumstances dictate otherwise as explained in paragraph (2) of this Subsection. The notice period begins the day after the employee receives the notice.
2. The notice will advise employees that they should update their Official Personnel File (OPF) to ensure that their current experience, training, and qualifications are accurate.
3. When a reduction in force is caused by circumstances not reasonably foreseeable, the Office of Personnel Management (OPM), at the request of the Agency, may authorize a notice period of less than sixty (60) days before the effective date of release.

## *Section 3. Retention Registers*

- A. At least two (2) workdays before the issuance of initial specific notices, Local 572 will be provided a copy of the annotated retention register(s) to be used to issue specific notices. Amended or revised retention registers will be provided to Local 572 as soon as possible.
- B. The retention register will include:
  1. The employee's tenure group, competitive level, and original service date;
  2. The ratings of record used to compute credit for performance;
  3. The amount of credit for performance; and
  4. The adjusted service date.
- C. Employees and/or their designated representative will be permitted to review the retention register so that the employee may consider how the competitive level was constructed and how the relative standing of the employee was determined. This includes the right to review the complete retention registers for other positions that could affect the composition of the employee's competitive level, and the determination of the employee's assignment rights.

- D. Employees' performance ratings of record, due prior to the issuance of specific RIF notices, will be submitted to the servicing personnel office in sufficient time for retention standing to be determined. The due date would ordinarily be no more than fifteen (15) calendar days prior to the issuance date of specific notices.
- E. When employees affected by RIF are in the same competitive level with the same length of service, as augmented by performance credit, and the same subgroup, ties will be broken in the following order:
  - 1. Time in grade; and if a tie remains;
  - 2. Length of time in the Bargaining Unit; and if a tie remains;
  - 3. Length of service at the National Institutes of Health.
- F. Employees service computation dates for RIF purposes shall be adjusted for performance in accordance with government rules and regulations.

#### *Section 4. Review of Position Descriptions and Official Personnel Files*

Prior to initiating any reduction in force action, position descriptions shall be reviewed for accuracy and official personnel folders must be updated to reflect employees' latest experience and training as submitted by the employee on an OF-612 or its equivalent for use in determining qualifications for other positions. As deemed necessary, the Employer may request employees to update their OF-612 or equivalent.

#### *Section 5. Release from Competition*

- A. When it becomes necessary to release employees from a competitive level, noncompeting employees shall be released first. After all employees who are not competing employees are eliminated, the Employer shall select competing employees for release in the inverse order of their retention standing beginning with the lowest; i.e., all employees in Group III are selected for release before any in Group II, and all employees in Group II are released before any in Group I. Within each Group, all employees in Subgroup B are released before any in Subgroup A, and all employees in Subgroup A are released before any in Subgroup AD.
- B. Noncompeting employees will be listed apart from the retention register but on the same document. They will be removed by means other than reduction in force from positions in the

competitive level before releasing any competing employee from the level through reduction in force action. Noncompeting employees are those:

1. Serving in a position under a specifically leave alone limited temporary appointment or temporary or term promotion;
  2. With a written decision under 5 CFR Part 432 of removal for performance reasons.
- C. Employees with a written decision of demotion under Title 5 C.F.R. Part 432 will compete from the position to which demoted.
- D. The only exceptions to the above procedures will be those afforded by government-wide rules and regulations.
1. The Employer may provide a temporary exception for up to ninety (90) days for legitimate administrative reasons (e.g., an employee on extended sick leave or an absent employee who did not receive their notice on the same date as higher standing employees) so long as the rights of higher standing employees are not adversely affected.
  2. Where the Employer has made exceptions to the normal order of selection as outlined above, notice shall be provided as follows:
    - a. In cases of a continuing exception (more than ninety [90] days), written notice of the exception and the reasons for the exceptions will be given to each higher standing employee reached for release from the same retention register;
    - b. In cases of a temporary exception (up to ninety [90] days), written notice of the exception and the reason for the exception including the date the lower employee's retention will end, will be given to each higher standing employee reached for release from the same retention register;
    - c. The Employer will notate on the retention register the reason for any exception to the regular order of release. In addition, when a temporary exception is made the retention register will also reflect the date the retention will end;

- d. All exceptions will be made in a fair and objective manner;
- e. Group I or II employees who are selected for release from their competitive level, shall be offered to be assigned to a position for which they are qualified in another competitive level which requires no reduction, or the least possible reduction, in a representative pay rate when a position in the other competitive level is held by another employee in a lower tenure group or in a lower subgroup within the same tenure group AND is no more than three (3) grades or grade intervals below the position from which released; or with lower retention standing in the same tenure group and subgroup AND is not more than three grades or grade intervals below the position from which released (except that for a preference eligible with a compensable service connected disability of thirty [30] present or more the limit is five [5] grades intervals) AND is the same position or an essentially identical one, previously held by the released employee in a Federal agency.
- f. An employee is entitled to only one (1) offer of assignment, and the Employer shall select which of two (2) or more positions with the same representative rate it wishes to offer. An employee is entitled to no further offers when:
  1. They accept an offer;
  2. They reject an offer;
  3. They fail to reply to an offer within a reasonable time; or
  4. An employee will be given ten (10) working days in which to accept or reject a reassignment offer made pursuant to this Section.

*Section 6. Content of Notice of Release*

1. The action to be taken, the reasons for the action, and its effective date;

2. The employee's competitive area, competitive level, subgroup, service date, and three (3) most recent ratings of record received during the last four (4) years;
3. The place where the employee may inspect the regulations and record pertinent to this case;
4. The reasons for retaining a lower-standing employee in the same competitive level under 351.607 or 351.608 of Title 5 C.F.R.;
5. Information on re-employment rights, except as permitted by 351.803(a) of Title 5 C.F.R.; and
6. The employee's right, as applicable, to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations or to grieve under a negotiated grievance procedure. The agency shall also comply with 1201.21 of Title 5 C.F.R. of this title.
7. When an agency issues an employee a notice, the agency must, upon the employee's request, provide the employee with a copy of OPM's retention regulations found in part of 5 CFR 351 of this chapter.

*Section 7.* Where an employee is proposed for separation or assignment to a lower grade level, the employee and/or their designated Union representative shall have the right to inspect retention records and other records pertinent to their case, including Office of Personnel Management and NIH/ORS reduction in force regulations. The employee and/or their Union representative are entitled to inspect the registers listing employees who may be entitled to displace him, as well as the registers of employees they may be entitled to displace.

*Section 8.* Reemployment Priority

- A. The Employer shall establish and maintain a reemployment priority list for each competitive area in which it separates Group I or II employees by reduction in force. The name of each separated employee shall be entered on the list for all competitive positions in the commuting area for which they are qualified and available.
- B. An employee who has declined assignment to a full-time, non-temporary, competitive position with a representative rate no lower than that of the position from which separated, shall not have their name placed on the list.

- C. The name of a separated Group I employee shall remain on the list for two (2) years, while the name of a separated Group II employee shall remain on the list for one (1) year from the date separated.
- D. An employee's name shall be deleted from the list when:
  - 1. The employee so requests, in writing;
  - 2. The employee accepts a non-temporary, full-time competitive position;
  - 3. They decline a non-temporary, full-time competitive position with a representative rate no lower than that of the position from which separated by reduction in force; or
  - 4. Establish and maintain a Re-employment Priority List for the affected competitive area(s).

*Section 9.* Employees separated from the Agency by reduction in force actions shall be advised in writing by the Employer of their rights to severance pay, if any; a lump sum payment for all accrued annual leave; their eligibility to apply for the Office of Personnel Management Displaced Employee Program; their Quality for placement on the re-employment priority list; their eligibility for discontinued service retirement; and the effect of the reduction in force on life and health insurance coverage.

*Section 10.* An employee who is placed as a result of a reduction in force action in a lower grade position than the previous position, and who is otherwise eligible, shall receive grade and pay retention benefits in accordance with Title 5 U.S.C. 5362 and 5363.

*Section 11.* NIH Career Transition Assistance

A. *Policy*

In making personnel adjustments resulting from program and organizational changes, it is the objective of the Agency that it will make every reasonable effort to place all employees affected by the RIF or TOF in continuing positions for which they are qualified at NIH. Where it is determined to be appropriate by Management, consideration will be given to retraining effected employees to enable them to qualify for continuing positions.

B. *Personal Interview; Special Problems*

The Agency will give affected employees a personal interview and will treat each as an individual to try and resolve special problems.

### *C. Displaced Employee Assistance Program*

1. This program applies to all employees in the bargaining unit of the Agency except those having temporary appointments and those falling in Group III under Part 351 of OPM Regulations.
2. Employees displaced by reduction in force will be assisted by the Agency in finding other suitable positions as explained in this Article. This includes Employees who are affected by TOF and are unable to accept assignment to another commuting area.
3. The procedures for assisting displaced employees are as follows:
  - a. When an employee is released from the Agency by RIF action, every effort will be made to seek placement of the employee in another position for which the employee is qualified and available at the same or lower grade from which the employee was displaced.
  - b. The employee's name will be entered on an NIH Displaced Employee List (DEL) or its equivalent. The employee's name will be automatically referred for consideration for all NIH vacancies for which he or she is qualified. If the employee is not selected, the selecting official will provide a written explanation for non-selection.

*Section 12.* When an employee or the Union believes the Employer has incorrectly applied applicable law, regulation, or this Article in a reduction in force action, a dispute may be filed pursuant to Article 29.

## ARTICLE XXVII

### Performance Management Appraisal Program

#### *Section 1. Overview*

- A. The Parties recognize that implementation of appropriate laws and regulations require the development of performance appraisal systems based on objective job-related criteria and organizational goals.
- B. The Employer will establish written performance plans in accordance with OPM, pertinent laws and regulations.
- C. For the purpose of this Agreement, the objectives of the **Performance Management Appraisal Program (PMAP)** include: establishing specific performance expectations; increasing the opportunities for constructive communication between supervisor and employee; accurately and fairly evaluating individual employee performance based on objective job-related criteria; and increasing the productivity and effectiveness of the Department by improving employee performance.
- D. The results of performance appraisals can be used as one basis for other informal and formal personnel management actions including awards, disciplinary actions, training, promotions, and reassignments.

#### *Section 2. PMAP Definitions and Requirements*

- A. Performance plans consist of job elements (including four to six critical elements, including the Administrative Requirements) and performance standards. The Union recognizes that the laws and regulations provide the Employer the right to establish performance expectations.
- B. “Critical element” means work assignments or responsibilities of such importance that unacceptable performance on the element would result in a determination that an employee’s overall performance is unacceptable. *All* elements in the performance plan are *critical*.
- C. “Performance Standard” is an expressed measure of the level of achievement of the job element established by the Employer for the duties and responsibilities of a position or a group of positions

for a particular rating level. Performance standards may include, but are not limited to, criteria such as quality, quantity, timeliness and manner of performance.

- D. Each performance plan shall be based on the requirements of the position that contribute toward accomplishing organizational goals and objectives.
- E. The levels for rating of performance and their definitions are identified in the PMAP Policy.

### *Section 3. Guidelines for Performance Monitoring*

- A. Performance expectations will be applied in a fair and equitable manner.
- B. The Employer and employee shall review work plans jointly at least twice a year.
- C. No employee will be adversely affected due to the delay in implementing any revised elements and standards, or due to the transition from the current evaluation systems to a new system.

### *Section 4. Process and Guidelines for Performance Appraisals*

- A. Employees will be kept informed of performance expectations and their general performance on an ongoing basis. During progress reviews the employer will clearly state how the employee is performing, with particular emphasis on how performance can be improved.
- B. Appraisals of performance will be fair and accurate and relate to specific, written performance requirements. Employees will be rated against the established performance expectations based on observable or measurable performance.
- C. In evaluating the quantity of work performed by an employee, the Employer will take into account authorized time spent away from the position, such as time spent performing collateral duties and union representational functions.
- D. Any time an employee's performance drops to less than a Minimally Successful level, the immediate supervisor shall meet with the employee and discuss the performance and the basis for finding the performance less than Fully Successful.

### *Section 5. Disagreement with the Rating*

Employees are encouraged to discuss disagreements with the supervisor/rating official and the reviewing official in an attempt to resolve the issue informally. If the employee disagrees with the rating of record, the rating official must advise the employee of his/her right to respond in writing to the rating. This response will be attached to the rating form, but it will not change the rating assigned by the rating official.

## **ARTICLE XXVIII**

### **Disciplinary and Adverse Actions**

*Section 1.* It is agreed that all disciplinary and adverse actions must be based on such cause as will promote the efficiency of the service and handled in compliance with applicable laws and regulations. In all actions the rights and dignity of the employee should be maintained.

*Section 2.* The provisions of this Article are applicable to:

1. Letters of reprimand;
2. Suspensions of fourteen (14) days or less; and
3. Removal, suspensions for more than fourteen (14) days, reduction in grade or pay, or furlough for thirty (30) days or less pursuant to Chapter 75, 5 U.S.C.

*Section 3.* The Union shall be given the opportunity to be represented pursuant to Chapter 71, 5 U.S.C. section 7114 (a) (2), including any formal discussion and/or investigation if:

1. The employee reasonably believes may result in disciplinary action against the employee; and
2. The employee requests representation.

*Section 4.* The Agency agrees to discuss with the employee the basis for any proposed disciplinary or adverse action prior to the issuance of a proposal, unless an emergency or employee's unavailability precludes such a discussion.

*Section 5.* The Parties agree that similar penalties should be imposed for similar offenses in similar circumstances. The Agency further agrees to examine and take into consideration all pertinent mitigating circumstances when considering the initiation of disciplinary or adverse action.

*Section 6.* The Agency will issue a written proposal of a disciplinary or adverse action.

*Section 7.* The employee shall be given an extra copy of any proposal for disciplinary or adverse action. The employee may wish to make this available to their representative.

*Section 8.* A reasonable amount of time will be given to the employee to prepare a reply, normally fifteen (15) calendar days.

*Section 9.* Notices of decisions to effect disciplinary actions shall advise the employees of their grievance/appeal rights, rights to representation, the address to which the grievance/appeal be directed and the appropriate time limits.

## **ARTICLE XXIX**

### **Grievance Procedure**

#### *Preamble*

The Parties wish to foster an atmosphere of cooperation and mutual respect between supervisors and employees. To that end, supervisors and employees are encouraged to communicate regularly with each other and discuss any problems or concerns and try to resolve them informally. If such informal efforts are unsuccessful, the employer or employees may utilize the grievance procedure as prescribed in this Article. A grievance is any dispute, difference, disagreement, or complaint between the Agency, an Employees or the Union relating to conditions of employment. A grievance will include, but is not limited to, a complaint of an employee or the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement, laws, Memorandum(s) of Understanding, and local and government wide rules and regulations in existence when this agreement is effected.

#### *Section 1. Purpose*

- A. The purpose of this Article is to provide a mutually acceptable method for a prompt and equitable settlement of grievances.
- B. This shall be the procedure through which a just, speedy, and inexpensive determination of such grievances are secured. Therefore, the Parties agree that grievances processed through this procedure should be resolved as early as feasible and at the lowest organizational level practicable.
- C. This shall be the exclusive procedure available to the Parties and employees in the Unit.

#### *Section 2. Coverage and Scope*

- A. A grievance means any complaint:
  1. by an employee(s) concerning any matter relating to the employment of the employee;
  2. by the Union concerning any matter relating to the employment of any employee; or
  3. by any employee(s), the Union or the Agency concerning:
    - a) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

- b) any claimed violation, misinterpretation or misapplication of any law, rule or regulation affecting conditions of employment.
- B. An employee who alleges a prohibited personnel practice under Title 5 C.F.R. 2302(b)(1) which also falls under the scope of this Article may raise the matter under a statutory procedure or this Article, but not both. Similarly, with respect to adverse actions and performance based actions, employees may raise such matters under applicable appellate procedures or this Article, but not both.

### *Section 3. Exclusions*

- A. Excluded by Statute from the grievance procedure are:
- 1. Any claimed violation of Subchapter III of Chapter 73 of Title 5 of the U.S. Code (relating to prohibited political activities);
  - 2. Retirement, life insurance, or health insurance;
  - 3. A suspension or removal under Section 7532 of Title 5 of the U.S. Code (for National Security reasons);
  - 4. Any examination, certification, or appointment; or
  - 5. The classification of any position which does not result in the reduction in grade or pay of an employee.
- B. Further, this Article does not apply to:
- 1. A binding decision made by an authority outside the Department;
  - 2. Termination of an employee on a temporary appointment;
  - 3. Filling a position outside the bargaining unit;
  - 4. A preliminary warning notice of an action which if effected would be covered under the grievance procedure; or a proposed action; or
  - 5. Any action which is administratively appealable pursuant to 5 U.S.C. Chapter 75 or anything excluded by any law, rule or government wide regulation.
  - 6. Non-selection for bargaining unit employees from amongst properly rated and ranked candidates with the exception that employees may file grievances alleging unlawful discrimination as defined by Title VII.

7. Employees may also file either a grievance or unfair labor practice, but not both, alleging anti-union animus.

#### *Section 4. Rights*

- A. Nothing in this Agreement shall be construed as precluding discussion between an employee and their immediate supervisor of a matter of interest or concern to either of them, once a matter has been made the subject of a grievance under this procedure.
- B. Nothing herein shall preclude either party from attempting to resolve the grievance informally at the appropriate level.
- C. An employee or group of employees in the bargaining unit filing a grievance under this procedure may be represented by a Union representative. An employee or group of employees in the bargaining unit may present a grievance under this procedure without representation as long as the Union is given an opportunity to be present during the grievance proceeding.
- D. In presenting a grievance, the grievant and the duly designated Union representative, if any, shall be free from restraint, interference, coercion, discrimination, and reprisal.
- E. If in an active duty status, a grievant shall, upon request, be allowed a reasonable amount of official time during regular working hours without charge to leave, when such time is required for obtaining, preparing, and assembling information pertinent to the presentation of the grievance. If in an active duty status, a duly designated Union representative shall be allowed a reasonable amount of official time pursuant to Article 6, Section 5 of this Agreement.
- F. Similarly, a reasonable amount of official time shall be allowed for the presentation of the grievance to the appropriate management official or third party. For this purpose, "reasonable time" is construed to be that amount of time actually needed to appear and present pertinent documents and information relating to the grievance. This includes a reasonable amount of time to travel to and from such presentation. If in an active duty status, a duly designated Union representative shall be allowed a reasonable amount of official time pursuant to Article 6, Section 5 of this Agreement.

#### *Section 5. Definitions*

- A. "Employee" means an employee in the bargaining unit or such former bargaining unit employees who have a timely grievance.

- B. A “personnel action” is an action which requires issuance of a formal document (SF-50) through which a change in the employment conditions or status of an employee is requested, recorded, and documented.

### *Section 6. Grievance Form*

- A. A grievance may be filed electronically or on paper. The grievance is to be signed by the grievant(s) and/or Union, dated, and include information specified in Step 2 contained in this Article. For the purposes of grievances filed electronically, the grievance will be considered signed if it comes from the employees work email address.
- B. Trivial or clearly mechanical errors not affecting the substantial rights of a party shall be disregarded at every stage of the proceedings under this Article. A properly filed grievance form shall be accepted and processed promptly. If filed on paper, to be properly filed, all signatures on the form must be original; photocopied signatures will not be accepted. An incomplete form will not be a basis for rejecting the grievance, but will be returned to the grievant or the Union for proper completion before processing. For purposes of timeliness, the grievance will be considered filed when the form is first received by the appropriate management official. However, the time for response will not begin until the properly completed grievance form is received by the appropriate official.
- C. A grievance is properly filed when prepared in accordance with Subsection A of this Section and shall be accepted by the Agency when it is postmarked or personally delivered to the appropriate official within the time limits established in this Article.

### *Section 7. Procedures*

#### **INFORMAL PROCEDURES**

- 1. The Agency and the Union agree that every effort will be made to settle grievances at the lowest possible level. Most grievances arise from misunderstandings or disputes which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory and shop steward level. In the informal stage the Employee has fourteen (14) calendar days to attempt to resolve the dispute and/or grievance before

proceeding to the formal grievance procedure. The employee may request either or both of the following methods:

2. Employee/Supervisor Discussions: speak directly with the management official/supervisor;
3. Alternative Dispute Resolution: engage the use of Alternative Dispute Resolution (ADR).
4. Employee/Supervisor Discussions: Before proceeding to any formal grievance procedures, employees will discuss such issues with their supervisor. This will allow an informal resolution to be achieved regarding any problem which the employee feels the supervisor needs to address. The employee may request to be accompanied and represented by the union steward or a representative of their choice. As a way to encourage resolving the matter at this level, the employee is responsible for submitting a written statement of concerns to the management official. The management official must provide the employee with a written response to the employee's concerns whether they are resolved or not.

#### ALTERNATIVE DISPUTE RESOLUTION

The Center for Alternative Dispute Resolution (CADR) offers employees the opportunity to resolve any dispute in an informal manner. The Parties encourage the use of the CADR as an enhancement for the informal step of the grievance procedure; however, ADR can be requested at any stage of the grievance process.

##### *Step 1. Grievance*

1. A grievance must be filed within twenty (20) calendar days after the event which is being grieved. It is the responsibility of the aggrieved party to meet this time frame. A grievance filed at Step 1 must include:
  - a. Date of grievance;
  - b. Name of grievant;
  - c. Supervisor Name;
  - d. Basic facts, issues, or concerns;
  - e. Provisions of the Agreement.
2. Generally, all grievances shall be filed in writing or electronically with the first-line supervisor who was the respondent in the informal proceeding. The only exception to this practice will be if the responding

official in the informal step was at a higher level of management than the first-line supervisor. In that case, the formal Step 1 would proceed to that level for formal resolution and then proceed to the next appropriate level, if necessary, to resolve a grievance. Regardless, the first step, Step 1, of the formal procedure would be with the official who made the informal response or decision. This would allow the grievance to be formally resolved at the lowest possible level. Any questions regarding or disagreements on the respondent, other than the first-line supervisor, will be referred to the servicing LRO. They shall make a decision and inform the Steward.

3. The responding management official shall have ten (10) calendar days to respond to the grievance.
4. Representation at the formal Step 1 shall be provided by any steward.
5. If no decision is rendered in a timely fashion, the grievor or Union may appeal to Step 2.

#### *Step 2. Grievance*

1. A grievance may be appealed to Step 2 of this procedure within fourteen (14) calendar days of receipt of an unsatisfactory Step 1 response or from the date the response was due. The grievance must include the following:
  - a. Date of occurrence;
  - b. Name of grievor;
  - c. Official to whom appealed;
  - d. Basic facts, issues, or concerns submitted at Step 1;
  - e. Provisions of the Agreement alleged to have been violated;
  - f. Remedy sought; and
  - g. Name of the on sight Union representative.
2. The Step 2 appeal shall be filed with the second-line supervisor of the aggrieved employee. The second-line supervisor shall have fourteen (14) calendar days to provide a written response to the grievance. The grievance will be returned if any portion of the required information is missing.
3. If no decision is rendered by the above time frame, the aggrieved party may appeal to Step 3.

### *Step 3. Grievance*

1. If the grievance is not satisfactorily resolved at Step 2, the aggrieved party may forward the grievance to the appropriate section chief, branch chief, or Division Director, as appropriate. This Step 3 grievance must be received within ten (10) calendar days of the time frames pursuant to Step 2 above or receipt by the employee and their representative of the Step 2 decision. The Step 3 official there will issue a decision within fourteen (14) calendar days after receipt of the grievance.
2. If no decision is rendered by the above time frame, the aggrieved party may refer the matter to arbitration.

### *Section 8. Invocation of Arbitration*

Upon receipt of the final Step 3 decision or if no decision is rendered in a timely fashion, the Union may refer the matter to arbitration in accordance with Article XXX.

### *Section 9. Termination of Grievance*

A grievance shall terminate only upon a determination that the grievance does not meet the requirements pursuant to Section 7 B. 1. above, or by the Union not to proceed with the grievance; for failure to proceed to the next step in a timely fashion; if an arbitrator rendered a decision; or, a final decision is rendered on an appeal from the arbitrator's decision.

### *Section 10. Modification of Procedures*

The time limits delineated in this Article may be modified by mutual Agreement of the Parties. The Parties may mutually agree in writing to waive Step 1 or 2 of this procedure only if the authority to resolve the grievance extends beyond those management officials.

### *Section 11. Grievability/Arbitrability Questions*

The parties agree to raise any questions of grievability or arbitrability of a grievance prior to the limit for the written answer in the final step of this procedure. All disputes of grievability/arbitrability shall be referred as threshold issues in the related grievance, except where the parties agree to hear the threshold issue and merits of the grievance separately.

### *Section 12. Time Limits*

All the time limits in this article may be extended by mutual consent only.

## **ARTICLE XXX**

### **Arbitration**

*Section 1.* If the Agency and the Union fail to settle any grievance processed under the negotiated grievance procedure, such grievance shall be submitted to arbitration upon written request by either party within thirty (30) calendar days after issuance of final decision.

*Section 2.* Within fifteen (15) calendar days from the date of the request for arbitration, either party shall request the Federal Mediation and Conciliation Service to provide a list of seven (7) impartial persons qualified to act as arbitrators. The Parties shall meet within fifteen (15) calendar days after receipt of such list. If they cannot mutually agree upon one of the listed arbitrators, then the Agency and the Union will each alternately strike one arbitrator's name from the list of seven (7) until one name remains who shall be the duly selected arbitrator.

- (a) Once an arbitrator is selected, the moving party must, within ten (10) days notify the selected arbitrator that it is prepared to move forward. If the moving party fails to do so, the arbitration shall be considered withdrawn by the moving party.
- (b) All arbitrations will be held within sixty (60) days of the moving party notifying the selected arbitrator that it is prepared to move forward, unless otherwise mutually agreed to. If the moving party fails to pursue the grievance to hearing within 60 days, the arbitration shall be considered withdrawn by the moving party.

*Section 3.* The Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an arbitrator to hear the case in the event:

- A. Either party refuses to participate in the selection of an arbitrator; or
- B. Upon inaction or undue delay on the part of either party.

*Section 4.* Within ten (10) days from the request for arbitration, the parties shall attempt to jointly define the issues. If the Parties fail to agree on a joint submission of the issue for arbitration, each shall submit a separate statement of the issue(s). The arbitrator shall make a final determination of the issue(s) to be heard.

*Section 5.* The arbitrator's fee and the expenses of the arbitration, if any, shall be borne by the losing party. The arbitrator does not have the discretion to alter the fee payment agreement contained in this agreement.

The arbitration hearing will be held if possible, on the Agency's premises during the regular day shift hours of the basic workweek. All participants in the hearing shall be in a duty status. The Union may have one observer for training purposes. This individual must be a representative of the Union and will be allowed official time, pursuant to Article 6, Section 5, to attend.

Either party may call expert witnesses to testify. An expert witness is not classified as an observer as the duties of the expert witness are significantly different from that of an observer. The observer has no say in the arbitration proceeding and is present only to observe the proceedings. An expert witness testifies and gives advice during the Arbitration according to their field of expertise.

*Section 6.* The arbitrator will be requested to render their decision as quickly as possible, but in any event not later than thirty (30) calendar days after the conclusion of the hearing unless the Parties mutually agree to extend the time limit.

*Section 7.* The arbitrator's award shall be binding on the Parties subject to the provisions of Chapter 71, Title 5 of the U.S. Code. If management acts reasonably within the terms of an unclear award, the union agrees to file an unfair labor practice with the Federal Labor Relations Authority, rather than return the case to the arbitrator for additional decisions. Finally, the parties agree that there will be no automatic retention of jurisdiction, unless the parties mutually agree to allow the arbitrator to do so. Any disagreement by either party over the application of an arbitrator's award may be returned to the arbitrator for settlement including remanded awards.

*Section 8.* Any exception to an arbitrator's award must be filed with the Federal Labor Relations Authority in accordance with the provisions of Chapter 71, Title 5 of the U.S. Code.

*Section 9.* Except as mutually agreed otherwise by the Parties, arbitration will be conducted as oral proceedings with provision for a verbatim transcript. The requesting party shall pay for the transcript and it shall be their property.

*Section 10.* The arbitrator shall hear arguments regarding arbitrability and the merits of the case at the same hearing. If the Parties agree otherwise, the merits of the case will be deferred by the arbitrator pending resolution of the arbitrability issue.

*Section 11.* The arbitrator shall have no power to add to, subtract from, disregard, alter or modify any terms of this agreement.

## **ARTICLE XXXI**

### **New Technology**

*Section 1.* The Union understands it is management's right to implement new technology; therefore, it is agreed that the advancement and implementation of new technology is essential to the support of the Agency's mission.

*Section 2. Purpose.* New technology is intended to enhance customer service, competitive advantage, improve job performance; safety, and greater economical service to the Agency and employees.

*Section 3. Definition.* New technology is defined as computer systems, equipment, hardware and software, office furniture, accessories and decor, new processes, restructure and organizational realignments, government and agency-wide electronic programs and initiatives, high-tech equipment, and energy conservation systems/devices.

*Section 4.* Except under emergency conditions as determined by the Agency, prior to implementing any new technology which may impact on employees in the bargaining unit, the Agency will notify the Union a minimum of thirty (30) calendar days in advance of implementation. The Union will have fifteen (15) days from the date of notification to request to bargain. If the union fails to request to bargain, the Agency may implement the new technology without further negotiations.

## **ARTICLE XXXII**

### **Retirement**

*Section 1.* An employee, at any time, is entitled to request an annuity estimate from a Benefits Specialist, which may include informational material regarding Thrift Savings Plan, Health Benefits and Life Insurance.

*Section 2.* Each employee who contemplates retirement, whether voluntarily or involuntarily is entitled to consult with a Benefits Specialist regarding their eligibility to retire under disability, discontinued service or a deferred annuity; the employee may request union representation during discussions with agency.

*Section 3.* An employee may withdraw a resignation or retirement application at any time prior to its effective date, provided the withdrawal is communicated to the Employer in writing and received and approved by the Employer. Employees who have resigned or retired may request that they be considered for re-employment to their recently vacated position in accordance with government-wide rules and regulations.

*Section 4.* The parties recognize that final decisions concerning retirement applications and issuance of retirement checks are the responsibility of the Office of Personnel Management. The Employer agrees to process and transmit all necessary paperwork in connection with retirement applications in a timely fashion.

## **ARTICLE XXXIII**

### **Dues Deduction**

*Section 1.* Employees may make voluntary allotments for the payment of Union dues. To be eligible an employee must be a member of a unit covered by this Agreement.

*Section 2.* Allotments will be made for the regular periodic amount of dues required to maintain the employee as a member in good standing of the Union. Initiation fees, special assessments, back dues, fines and similar items are not dues.

*Section 3.* Dues will be withheld on a biweekly basis conforming to the regular pay period and will begin with the first full pay period following receipt of the allotment form in the NIH Labor Relations Office in building 31, room B3C07.

*Section 4.* The Union shall:

- a. make available to its members necessary authorization forms (SF-1187);
- b. certify on Form SF-1187 the amount of dues to be withheld;
- c. notify the Labor Relations Officer (LRO) when an employee with an allotment ceases to be a member in good standing;
- d. notify the LRO when there is a change in the dues (changes may be made only once every twelve months); and,

*Section 5.* An employee may revoke their authorization by submitting Standard Form 1188 to the union. Revocations may not become effective until the first anniversary date of the initial allotment and annually thereafter, the first full pay period following September 1, provided that the revocation has been received prior to the designated effective date and the necessary processing into the DHHS payroll system has been completed.

*Section 6.* The Parties agree that there shall be a single level dues structure under this Agreement.

*Section 7.* The Agency will make Electronic Funds Transfer to the appropriate Union account. Deposits will be made every pay period and correspond to the employees pay periods.

*Section 8.* Allotments will be terminated (1) when the employee ceases to be a member in the bargaining unit, (2) if the Union loses exclusive recognition for the covered unit, (3) reasons specified by Title V. It is agreed that the employee has responsibility completing and forwarding a Standard Form 1188. The Union is responsible for notifying the Labor Relations Office whenever an employee's allotment should be terminated because the employee has ceased to be a member in good standing of the Union.

## **ARTICLE XXXIV**

### **Bulletin Boards and Announcements**

*Section 1.* The Employer agrees that bulletin board space shall be provided in designated areas within the bargaining unit for the display of Union literature and notices.

*Section 2.* The Union may post literature; however, it must not violate any laws, the security of the activity, or contain scurrilous or libelous material. Material to be posted shall not contain the official NIH letterhead or seal, or contain personal attacks on or support of individuals, political parties, racial or religious groups, private companies, governments, etc.

*Section 3.* The Union will be responsible for posting their material on the bulletin boards. All bulletin board material must be kept current, up to date and present a neat, orderly appearance.

*Section 4.* The Union will be allowed to use existing public announcement systems in accordance with existing Clinical Center (CC) policies and procedures. Consistent with CC policy, announcements over the hospital's public address system are only permissible if such announcements concern events conducted primarily for the benefit of patients and their family members. All announcements must be reviewed by the Clinical Center management prior to being made.

**ARTICLE XXXV**  
**Training and Career Development**

*Section 1.* The parties recognize that the training and development of employees contribute toward efficient operations. Accordingly, the Employer will, within budgetary and staffing limitations, and to the extent practicable, encourage and provide employees with necessary training and development opportunities to enable them to perform their assigned work more effectively, as well as to enhance career opportunities within the activity to qualified employees.

*Section 2.* The determination of training needs, the choice of subject matter, areas of training, selection of employees and the assignment of training priorities is a function of the Employer.

## **ARTICLE XXXVI**

### **Duration and Changes**

*Section 1.* This Agreement shall remain in full force and effect for a period of four (4) years after its approval. It shall be automatically renewed for one year periods unless (1) either party gives the other party notice of its intention to terminate or renegotiate this Agreement no less than sixty (60) nor more than one-hundred and five (105) calendar days prior to its terminal date, or (2) at any time it is determined the Union no longer is entitled to exclusive recognition for the units covered hereunder as provided by Title VII. Negotiations shall begin no later than ninety (90) calendar days after notification of intent to renegotiate the Agreement. If renegotiation of the Agreement is in progress but not completed upon the terminal date of this Agreement, this Agreement will remain in effect.

*Section 2.* Amendments to this Agreement may be required because of changes in applicable laws, rules, regulations or policies issued by higher authority after the effective date of this Agreement. In this event the Parties will meet for the purpose of negotiating new language that will meet the requirements of such higher authority.

*Section 3.* In the event it is found that sections of this Agreement are defective or unworkable, this Agreement may be reopened for amendment provided that any request for amendment for these reasons is submitted in writing and is accompanied by a summary of the basis for the request; and provided further that both Parties consent to the reopening of the Agreement for the purpose requested. A written notice of desire to renegotiate shall not have the effect of terminating this Agreement.

*Section 4.* This Agreement, entered into between the Employer and the Union, prior to becoming effective, is subject to the approval of the Public Health Service.

## **ARTICLE XXXVII**

### **Office and Equipment for the Union**

*Section 1.* The Agency will provide adequate office space, approximately 80 square feet plus equipment and furniture.

*Section 2.* The Union shall be provided use of intra-office mail system and electronic mail on the ORS network. All Stewards and Officers will have access to an agency computer for e-mail usage. They will have separate e-mail accounts and will be provided basic computer training. The use of these shall not be for internal Union business. The Agency will also provide telephone service.

*Section 3.* The Agency will provide the use of one desk, two chairs, one file cabinet, one computer, one printer and one telephone.

*Section 4.* The Union shall be required to sign all necessary documents required by the agency for use of a computer on the Agency's network. Maintenance of the office furniture will be the responsibility of the Union. The Union will meet the requirements for the accountability of personal property for the office equipment provided for their use.

## Request for Approval of Official Time

A separate form is necessary for each unrelated representational activity.

**TO:** \_\_\_\_\_

Supervisor or Leave Approving Official

**FROM:** \_\_\_\_\_

Representative's Name

PSEU Local-572

Union

**SUBJECT: Official Time Request for the Union Related Activity**

The above listed representative is requesting to schedule official time in accordance with the parties Negotiated Agreement and the Federal Service Labor-Management Relations Statute.

Date(s) Representational Activity Requested	Time of Day	Person/Location	Approximate Number of Hours	Actual Hours

**Category I - Negotiations**

- A. Contract, Renegotiations or Reopened Negotiations
- B. Mid-term Negotiations (impact and implementation)

Statutory Time

- A. \_\_\_\_\_
- B. \_\_\_\_\_

Bank Time\*

**Category II - Ongoing Labor-Management Relationship**

- A. ULP Proceedings
- B. FLRA Proceedings Other than ULP'S
- C. Health and Safety Matters
- D. All Other (e.g. commenting on drafts or regulations, union rep., Training, consultation D. or discussions)
- E. NIH Partnership
  - A. Partnership Meeting
  - B. Sub-committee
  - C. All other activities
  - D. Combination of above

- A. \_\_\_\_\_
- B. \_\_\_\_\_
- C. \_\_\_\_\_
- D. \_\_\_\_\_
- E. \_\_\_\_\_
  - A. \_\_\_\_\_
  - B. \_\_\_\_\_
  - C. \_\_\_\_\_
  - D. \_\_\_\_\_

**Category III - Representational**

- A. Discrimination Complaints (including pre-complaint stage)
- B. Grievances
- C. Disciplinary and Adverse Actions (MSBP appeals)
- D. Arbitration
- E. Combination of above
- F. Legislative Activities

- A. \_\_\_\_\_
- B. \_\_\_\_\_
- C. \_\_\_\_\_
- D. \_\_\_\_\_
- E. \_\_\_\_\_
- F. \_\_\_\_\_

**Category IV- Miscellaneous Functions**

- IV. \_\_\_\_\_

Specify nature of function to be perform \_\_\_\_\_

Requester's Signature \_\_\_\_\_

Date \_\_\_\_\_

Official Time requests will be granted unless they substantially hinder the accomplishment of essential workload requirements that cannot otherwise be accommodated.

Supervisor: \_\_\_\_\_ Approval \_\_\_\_\_ Disapproval \_\_\_\_\_ Date \_\_\_\_\_

If Disapproved, why? Per-email and conversations: The request was denied, due to workload schedule.

\*Counts against your bank time if you have official time allotted per month for representation duties in your negotiated agreement.  
NIH 2789 (Rev. 12/99)