

# **Collective Bargaining Agreement**

**between**

**NOAA/NESDIS/National Centers for Environmental Information  
Asheville, North Carolina**

**and**

**The American Federation of Government Employees, Local 446**

**FINAL: July 11, 2019**

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## Preamble

In accordance with Title VII, Civil Service Reform Act of 1978, hereinafter referred to as the Statute, this Agreement is made and entered into by and between the Department of Commerce (DOC), National Oceanic and Atmospheric Administration's (NOAA), National Environmental Satellite, Data and Information Service (NESDIS), National Centers for Environmental Information (NCEI), Asheville, North Carolina (NC), hereinafter referred to as the "Employer," and American Federation of Government Employees (AFGE), Local 446, hereinafter referred to as the "Union." Collectively, they are referred to as the "Parties." References to "Agency" correspond to the Employer and/or higher-level Executive Branch entities above NCEI, Asheville, NC, including NESDIS, NOAA, U.S. Department of Commerce, and/or U.S. Office of Personnel Management.

The Employer and the Union agree that labor-management relations within NCEI, Asheville, NC are strengthened through a constructive and cooperative relationship between the Employer and the Union.

The Parties affirm that the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

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

## **Scope, Duration, and Amendments**

Any subsequent printing of or revisions to this Agreement would be for clarification and/or convenience purposes, not to create additional organizations.

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

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

The Parties agree to equally share the cost for the reproduction of eighty (80) copies of this Agreement. Management will ensure that this Agreement will be available electronically to all employees.

## **Article 1: Parties and Purpose**

### **Section 1. Parties**

This Agreement is between the Department of Commerce (DOC), National Oceanic and Atmospheric Administration's (NOAA) National Centers for Environmental Information (NCEI), Asheville, North Carolina, hereinafter referred to as the *Employer* and the American Federation of Government Employees (AFGE), Local 446, Asheville, North Carolina, hereinafter referred to as the *Union*.

### **Section 2. Purpose**

This Agreement establishes appropriate procedures for the operation of the NCEI.

### **Section 3. Cooperation**

The Parties will make a concerted effort to assure that employees are in compliance with this Agreement at all times.

## **Article 2: Recognition and Unit Designation**

The Union is the exclusive representative of Bargaining Unit Employees. The bargaining unit consists of all Federal professional and nonprofessional personnel employed by the DOC/NESDIS/NCEI, Asheville, North Carolina.

Excluded from the bargaining unit are all management officials, supervisors, and employees described in 5 United States Code (U.S.C.) § 7112 (b)(2), (3), (4), (6), and (7). Employees of NCEI whose duty station is other than Asheville, NC are also excluded.

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

### **Article 3: Laws and Regulations**

In the administration of all matters covered by this Agreement, the Parties and Employees are governed by the following:

#### **Section 1. Laws and Regulations**

No part of this Agreement may conflict with:

- A. Existing and future laws;
- B. 5 U.S.C. § 2302 (*Prohibited Personnel Practices*) or any rules and regulations promulgated thereunder;
- C. Existing government-wide rules or regulations; and
- D. Existing DOC and NOAA agency regulations.

#### **Section 2. Additions to NCEI, Asheville, North Carolina**

To the extent provided by law, the Parties agree that this Agreement shall be applied to all subsequent additions to NCEI, Asheville, NC and all newly established operations of the Employer at that location, which are utilized as part of expansion of current operations of the Employer, without additional evidence of Union representation of the Employees involved.

#### **Section 3. Negotiations**

To the extent that future Federal law and Government-wide regulations (implementing 5 U.S.C. § 2302 (*Prohibited Personnel Practices*)) are in conflict with this Agreement, the Federal law and Government-wide regulations implementing 5 U.S.C. § 2302 shall govern. In the event future Government-wide regulations (other than those implementing 5 U.S.C. § 2302) and/or agency policies, laws, rules, or regulations) are inconsistent with the existing provision of this Agreement, the provisions of this Agreement shall govern, subject to negotiation between the Parties.

## **Article 4: General Provisions**

### **Section 1. Job Assignment**

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

### **Section 2. Efficient Administration**

It is the intent and purpose of the Parties to promote and improve the efficient administration of NCEI, Asheville, North Carolina and to establish a basic understanding in accordance with Employer, Employee, and Union Rights and Responsibilities.

### **Section 3. Definitions**

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

### **Section 4. Exclusive Representation**

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

The Union shall have the opportunity to be represented at formal discussions between representative(s) of the Employer and bargaining unit employee(s) or their representatives in accordance with **Article 6** (*Union Rights and Responsibilities*).

### **Section 5. Efficient Operations**

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

### **Section 6. Elimination of Waste, Fraud, and Abuse, and Safe Work Environment**

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

## Article 5: Employer Rights

### Section 1. Employer's Authority

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

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

### Section 2. Negotiating

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

- A. At the election of the Employer, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods and means of performing the work.
- B. Procedures which Employer officials will observe in exercising any authority under this article.
- C. Appropriate arrangements for employees adversely affected by the exercise of any authority under this Article by such Employer officials.

## Article 6: Employee Rights and Responsibilities

### Section 1. Workplace Rights

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

### Section 2. Right to Union Representation

- A. Employees have the right to have a Union representative at:
1. All formal discussions between the Employer and the Employee concerning any grievance, or any personnel policy or practices or other general condition of employment, as provided for in 5 U.S.C. § 7114 (a)(2) and applicable regulations.
  2. Any examination of an employee in the unit by a representative of the agency in connection with an investigation if, (i) the Employee reasonably believes that the examination may result in disciplinary action against the Employee; and (ii) the Employee requests representation, as provided for in 5 U.S.C. § 7114 (a)(2) and applicable regulations.
- B. The Employer retains the right to hold counseling sessions with Employees without the presence of a Union representative. Counseling sessions may include an informal discussion between individual Employees and their supervisors regarding the Employee's performance; work assignments and procedures; application of established office and practices; leave practices and requests; and discussions of a personal nature.
- C. Nothing in this Agreement shall require an employee to become a member of the Union, or to pay money to the union except pursuant to a voluntary written authorization by a member for payment of dues through payroll deduction. For further information, see **Article 40** (*Voluntary Allotment of Union Dues*).
- D. The Employer agrees to annually inform all employees of their rights under 5 U.S.C. § 7114 (a)(2)(b). Each new employee will be given a copy of the Weingarten Rights upon starting employment.

### **Section 3. Whistleblower Protection Act**

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

### **Section 4. Union Role During Investigations**

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

### **Section 5. Non-Union Representation**

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

### **Section 6. Employee Responsibilities**

- A. Employees must carry out the lawful instructions of a supervisor or any other Management official with real or apparent authority. If there is a disagreement between the Employee and the supervisor or other management official, the Employee will comply with the instructions and, if desired, challenge the matter later.
- B. If employees receive conflicting orders, they will follow the last order given.
- C. Employees are expected to be professional at all times while in duty status or in other situations in which the Employee is representing the Agency.
- D. Employees must cooperate in any official investigation conducted by the Employer. Employees may be subject to disciplinary action for refusing to respond and or to cooperate, or for failing to respond truthfully.
- E. Employees are expected to be at their duty station on time, as scheduled. Employees must provide advance notice of their absences (including use of official time) and

request leave in advance, in accordance with the specific contractual provisions and other applicable laws, rules, regulations, and policies.

- F. Employees must provide contact information, such as their telephone or cell phone numbers, if requested by the Employer. The Employer will safeguard this information which will be used for official purposes only.

### **Section 7. Retirement Planning**

The Employer agrees to offer retirement planning information or counseling within the Asheville, NC commuting area to employees on a recurring basis.

### **Section 8. Employee Donations**

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

### **Section 9. Leaving Work Site**

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

### **Section 10. Salary**

- A. If an Employee does not receive an electronic funds transfer (direct deposit) for salary on the designated date, the Employee may contact the NCEI Division Administrative Assistant for the appropriate forms necessary to request a replacement deposit.
- B. When an Employee does not receive a salary check (including direct deposit) the Employee may request an emergency payment through the NCEI Division Administrative Assistant to avoid financial hardship.
- C. Employees have the responsibility to review their bi-weekly Earnings and Leave statements, accessible through electronic enterprise systems, in a timely manner and to notify their NCEI Division Administrative Assistant and/or supervisor as soon as practicable of any discrepancy thereon.

## **Section 11. Communications using Government Equipment**

- A. This section applies to all Employee communications made using government equipment such as: Phone calls, text messages, voicemails, emails, faxes and any other communications, whether by telephone, facsimile, email, or any other media, as well as desks, phones, computers, files, furniture, and work spaces.
- B. The Employer has a legitimate business, national security, and cybersecurity interest for monitoring Employees' use of Government property and equipment, and Employees have no right to privacy when using such property and equipment. Subject to applicable law, government-wide rule, or regulation, the Employer is not required to inform the Employee prior to a search of Government property or equipment that involves their personal effects or to allow the Employee or the Union to be present. For searches that involve an employee's personal effects, the agency will notify the Employee and the Union when the search area is secured.
- C. In the event that the Agency has reason to search an employee's workspace, and the search involves the Employee's personal effects, at least two (2) management officials will be present for the search.

## **Section 12. Elevation of Employee Concerns**

This Agreement does not preclude any bargaining unit employee from bringing matters of personal concern to the attention of appropriate officials of either Party in accordance with applicable laws, rules, and regulations without fear of reprisal or intimidation.

## **Section 13. Employee Petitioning of Government**

Employees have the right, either individually or collectively, to petition Congress, or any member thereof. All employees shall be provided the full protection extended to them by law, regulation, and this Agreement. These rights will not be interfered with or denied.

## **Section 14. Outside Employment**

Consistent with Department of Commerce Office of General Counsel, Ethics Division policy, and other applicable laws, rules, and regulations, employees have the right to engage in employment outside of NCEI, Asheville, NC, that does not conflict with his/her official duties. Employees will discuss such opportunities in advance with their supervisor if there is a potential conflict of interest.

## Article 7: Union Rights and Responsibilities

### Section 1. Representation

It is agreed that the Union shall be given the opportunity to be represented at all formal discussions between the Employer and the Employee concerning any grievance, or any personnel policy or practices or matters affecting the general working conditions of employees in the unit.

The Union has certain officials that serve more than one (1) unit (i.e., President, Executive Vice President, Secretary, and Treasurer). Therefore, there may be occasions when the Employer may be required to deal on NCEI, Asheville, NC matters with Union officials who are not NCEI, Asheville, NC employees.

For purposes of this Article, all official management correspondence will be forwarded to the Union President (and his/her designee(s)).

### Section 2. Recognition

The Employer recognizes that in furtherance of good labor-management relations, Union officials have the responsibility of carrying out representation duties. The Agency will keep the union informed of the designated management official for any union-initiated actions.

The Agency will recognize Union officials designated by the Local President as to who will be the spokesperson for the Union. Prior to representing employees in any proceeding, the Union shall provide to the appropriate management official or supervisor a written designation of representative from the Employee using **Appendix A** (*AFGE Local 446 Representation Form*), which shall include authorization to release information.

When the Union official meets with the Employer to discuss appropriate representational matters under this Agreement, recognition shall be given to the role of the Union official as an official representative of the Union with equal status. It is agreed that the interests of both Parties will be best served by mutual respect and good working relationships within the ranks of their respective representatives.

### **Section 3. Meetings**

As the exclusive representative of the Employees in the unit, the Union is entitled to meet and confer with representatives of the Agency with respect to personnel policies and practices and matters affecting working conditions, and to act for and to negotiate in good faith agreements covering all employees in the unit. The Union is responsible for representing the interests of all employees in the bargaining unit without discrimination and without regard to Union membership.

### **Section 4. Formal Discussions**

The Union shall be given the opportunity to be represented at formal discussions between Management officials and Employees concerning grievances, personnel policies, or other matters affecting general working conditions of employees of the unit.

- A. The Employer will notify the Union in writing of any scheduled formal meeting no fewer than two (2) business days in advance of the meeting, except in emergency situations. The notice will be sent to the Union President and a representative designated by the Union.
- B. The Employer will acknowledge the attendance of the designated Union representative at the start of the formal meeting. The Union representative will be given the opportunity to ask relevant questions on behalf of the Employees and may make a brief statement of the Union's position on the matter under discussion. At any formal meeting, the Union representative may inform employees that if any of them wishes to discuss the meeting topics with him or her further or in private, the Employee upon supervisory approval, may come to the Union office or other area to meet with the Union representative.

### **Section 5. Data Requests**

All requests for data made by the Union under 5 U.S.C. § 7114 (b)(4) will be identified and will be processed in accordance with all applicable laws, including case law, regulations, and contractual obligations. When the Union has demonstrated a particularized need and the requested information cannot be provided within thirty (30) calendar days, the Union will have the option of either postponing or amending any filing and/or other details relating to the request.

## **Section 6. Representation of Non Dues-Paying Members**

The Agency will inform the Union within ten (10) business days after a new bargaining unit employee reports for duty. A Union representative will be permitted up to 30 minutes to meet with each newly hired employee assigned to the bargaining unit for the purpose of explaining the role and responsibilities of the Union. This time will be made available within the first ten (10) business days after the Agency notifies the Union. It is the Union representative's responsibility to schedule the meeting through the new employee's supervisor.

## **Section 7. Bargaining Unit Employee Information**

The Employer will furnish, upon request by the Union, a list of bargaining unit employees after any major organizational changes or not more than quarterly, including name, position title, grade level, physical location, and organizational element, and designation as permanent or temporary.

## **Section 8. Surveys and Questionnaires**

- A. Participation in surveys will be voluntary unless the Parties agree to require participation. Employee responses will be confidential unless otherwise noted.
  
- B. Formal surveys originated by NCEI (not including brief polls or other limited audience-participation measures) will be provided to the Union in advance for comment and the opportunity to bargain over the content, as appropriate. High-level result that maintain individual anonymity from surveys will be shared with the Union as they become available.
  
- C. Third-party surveys and results will be shared with the Union when and if they become available.

## Article 8: Official Time

### Section 1. Administration of Official Time

The Employer will provide Union representatives a reasonable amount of official time under the provisions of 5 U.S.C § 7131 (d) pursuant to the Federal Service Labor-Management Relations Statute, and shall be administered in accordance with said Statute and this agreement.

- A. *Official time* is time that an employee spends performing the representational duties specified in 5 U.S.C. § 7131 (a) (c) and (d). While on official time, the Employee receives his or her regular salary if otherwise in a duty status. It does not include payment for overtime.
- B. *Union time* is time that an employee spends performing internal Union business found in 5 U.S.C. § 7131 (b). If granted, the absence will be charged to either annual leave or leave without pay, at the representative's discretion.

### Section 2. Use of Official Time

- A. An Employee representative will be permitted to leave their assigned work area on Official time, as appropriate and consistent with the work demands of the position, as authorized under and subject to this Agreement, including the limitations on pay and official time, after:
  - 1. Requesting and receiving approval of Official time through the Employer's attendance system (or other means if necessary for expediting approval);
  - 2. Providing a good-faith estimate of the amount of time for which release is requested;
  - 3. Indicating the offsite destination, if any, in the Employer's attendance system; and
  - 4. Specifying the appropriate representational category.
- B. Whenever an Employee representative needs to meet with an employee, the Employee will inform the immediate supervisor in advance to allow the supervisor to make a determination if the Employee can be released.

1. *Pre-authorization for non-urgent matters:* The immediate supervisor of the Employee will be made aware of the matter (as described in **Appendix A (AFGE 446 Representation Form)**) by the Employee representative in advance. The anticipated period of time and number of meetings will be articulated and will serve as a pre-authorization for future meetings on the matter consistent with that proposed time frame. The Employee representatives will likewise inform their supervisors in advance through the Employer's attendance system for official time granting and tracking.
  2. *Urgent matters:* The immediate supervisor of the Employee will be made aware of the matter and will allow, within the demands of the service, the Employee and the Employee representative to meet on a one-time basis, to be followed with the process outlined in Section 2.B.1. above as appropriate.
- C. If management is unable to approve a request for time, management will, within one (1) business day, identify an alternate time for use of the requested time. Under normal circumstances, the rescheduled meeting will occur within two (2) business days of the denial.
- D. The Employee representative will report his or her return to work to their immediate supervisor upon the conclusion of the use of official time under this Article.

### **Section 3. Recording of Official Time**

- A. Official time will be granted to an Employee representative only during the representative's regular working hours.
- B. All Official time will be requested in advance and approved/or disapproved through the Employer's attendance system.
- C. Each Employee representative shall timely submit his/her biweekly amount of Official time usage covered by this Article through the Employer's attendance system. If official time is used after submission of their time and attendance through the Employer's system, the record will be amended and submitted for supervisory approval.

D. Employee representatives will use the following categories to request and record their time and attendance in the Employer's attendance system:

1. 35- Term Negotiations.
2. 36- Mid Term.
3. 37- Base/Labor Management.
4. 38- Grievance/Disputes.

#### **Section 4. Official Time-Restricted Activities**

Employee representatives and Bargaining Unit Employees shall not perform any activity relating to internal Union business in accordance with 5 U.S.C. § 7131 (b).

#### **Section 5. Misuse of Official Time**

- A. It is the Union's responsibility to ensure that Official Time used for representational activities is used appropriately, in accordance with the Statute and this Article.
- B. In the interest of effective and efficient government, abuse or misuse of any Official Time or union time used for representational matters, to include failure to timely and accurately report time used, will not be tolerated and may result in administrative action against the Employee representative at the Employer's discretion and will be procedurally addressed as follows:
1. *First offense:* Union President is notified. The Employee representative receives a warning.
  2. *Second offense:* The Union President is notified and the Employee representative may be prohibited from using official time for representational activities for twenty (20) business days.
  3. *Third offense:* The Union President is notified and the Employee representative may be prohibited from using official time for representational activities for the remainder of the duration of the Agreement.
- C. Taking an administrative action as defined above does not prohibit the agency from affecting discipline or adverse action as appropriate.

## **Article 9: Mid-Term Bargaining**

### **Section 1. Rights and Obligations of the Parties**

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

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

### **Section 2. Local-Level Negotiations**

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

### **Section 3. Applicable Negotiation Procedures**

The procedures contained in this Section shall constitute the ground rules for all negotiations under this Article.

- A. *Notification Procedure.* In issuing, revising or canceling rules and regulations relating to personnel policy, practices, procedures and matters affecting working conditions, the Employer shall give due regard to the obligations imposed by applicable laws, rules, regulations, and this Agreement. Before making changes to bargaining unit employees' conditions of employment, or otherwise changing personnel policies or practices the Agency shall provide the Union President (and his/her designee(s)) with written notice of the proposed change(s). Such notice may be provided to the Union by mail, hand

delivery, or e-mail. All other correspondence under this Article shall be provided to the Union using similar means. The Union will provide the Agency with any response(s) in a similar manner. The Union's response shall be signed by the appropriate official as provided in Section 2 of this Article. Specific procedures to be used pursuant to this Article are as follows:

1. The Agency will provide written notice to the Union of the Agency's intent to make a change(s) of bargaining unit members' conditions of employment (that are not otherwise covered by the Parties agreement) once the Agency has made a final decision to implement the proposed change(s).
2. The Union will have five (5) business days to advise the Agency, in writing, of the Union's intent to negotiate over procedures and appropriate arrangements regarding the change pursuant to 5 U.S.C. § 7106. After that notice, the Union will then have ten (10) additional business days to provide the Agency with proposals relating to the impact and implementation of the proposed change. The Parties will then schedule a time to begin negotiating within seven (7) business days of the Agency's receipt of the Union's proposals.
3. The Union may request additional information regarding the proposed change(s) and/or to seek clarification of the reasons for the change outlined in the Agency's written notification during the course of negotiations. This information may be provided by documentary record or from a dialogue between the Agency and Union regarding the change(s).

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

1. The Agency will provide a site or technology for negotiations.
2. The Union will be authorized the same number of bargaining representatives on official time as the Agency has representatives participating in the negotiations. The Agency will not reimburse the Union or pay for travel expenses for Union officials attending mid-term bargaining sessions.
3. Either party may have a technical expert (TE) present as necessary who can provide information necessary for the successful completion of bargaining. Any TE (who is an employee) for the Union may be granted appropriate official time for participation in the bargaining sessions. The Agency will not reimburse or pay for travel expenses for the Union's TE.

4. Bargaining will occur during regular duty hours, unless otherwise mutually agreed by the Parties. The Parties will endeavor to reach agreement and conclude bargaining within ten (10) business days from the start of negotiations, but that period may be extended by mutual agreement of the Parties. Should the Parties not come to agreement during the allotted negotiation period the Agency may implement the change if it determines it must do so. However, post-implementation bargaining procedures pursuant to Section 4 of this Article will apply if the Parties are unable to reach agreement prior to the implementation date declared by the Agency.
5. The Union may raise no additional proposals or subjects of bargaining after submission of its initial proposals, except by mutual agreement or under the post-implementation bargaining procedure under Section 4 of this Article.

#### **Section 4. Post-Implementation Bargaining Procedure**

- A. *Definition.* Post-implementation bargaining is bargaining procedures and appropriate arrangements after a management-initiated change has been implemented. When the Agency determines that a particular change is necessary or appropriate, in accordance with law, rule or regulation and must be implemented by a certain date, post-implementation procedures will apply if the Parties are unable to reach agreement prior to the implementation date of the change.
- B. *Post-Implementation Bargaining Procedure.* The Union will be afforded the opportunity to submit bargaining proposals concerning the change for up to twenty (20) business days following the date that implementation by the Agency has occurred. The Union shall not file an Unfair Labor Practice charge solely over implementation prior to completion of bargaining. However, the Union reserves all other rights pursuant to applicable laws and regulations. Once Union proposals have been submitted to the Agency, the procedures in Section 3 above will apply.

#### **Section 5. Agency Head Review**

Agreements negotiated under this article will be subject to Agency Head Review pursuant to 5 U.S.C. § 7114 (c). In the event of disapproval at Agency Head Review, the Union will have the option of renegotiating the parts of the agreement that the Agency Head has disapproved. The option to renegotiate must be exercised by the Union by notice to the Employer within ten (10) business days of notice of disapproval.

## Article 10: Grievance Procedures

### Section 1. Purpose

The purpose of the following grievance procedure is to provide a process to ensure timely consideration of the grievance of bargaining unit employees, the Union, or the Agency.

Employees may bring concern(s) to an Employee representative, the Employer, or both on an informal basis prior to the use of these procedures. The representative will advise the Employee and, if requested, speak to the appropriate management official about the concern(s) as soon as possible. For all practical purposes, the appropriate management official is the first-line supervisor.

When concerns are not resolved on an informal basis, this negotiated procedure shall be the exclusive administrative procedure available to the Union, the Employer and the Employees in the bargaining unit for resolving such grievances except as otherwise provided in this Article or under statute.

### Section 2. Definition

*A grievance* is any complaint:

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

### Section 3. Excluded Grievances

This negotiated grievance procedure shall not apply with respect to any grievance concerning:

- A. Non-selection from a group of properly ranked and certified candidates;

- B. A notice of proposed disciplinary, adverse, or performance-based action (however, the subsequent decision may be grieved);
- C. The granting of, or failure to grant, or the amount of an award, bonus, or retention allowance;
- D. A return of an employee from non-bargaining unit position as a supervisor or manager to a bargaining unit position;
- E. Any claimed violation of Subchapter III of Chapter 71 of Title 5 U.S.C. as amended relating to prohibited political activities (i.e., Hatch Act violation);
- F. Retirement, life insurance, or health insurance;
- G. An examination, certification, or appointment under 5 U.S.C. § 7121(4);
- H. A suspension or removal for national security reasons;
- I. Termination of a probationary or trial period employee;
- J. Supervisory determination of job elements and performance standards;
- K. The content of any Agency Policy or regulation;
- L. The classification of any position which does not result in the reduction in grade or pay of an employee;
- M. Counseling, warnings, and other similar actions, whether oral or in writing; and oral admonishments;
- N. A fitness for duty decision which does not result in an action against the Employee;
- O. An action which terminates a detail or temporary or term promotion by its own terms.

#### **Section 4. Rights of Representation**

This negotiated procedure shall be the only procedure available to the Union and bargaining unit employees for resolving grievances except as provided in Section 6 below. If an employee wishes to present a grievance on his/her own behalf, a representative of the Union will have the right to be present at any meeting with the Agency concerning the grievance. This right of

grievance presentation without Union representation does not extend to arbitration which may be invoked only by the Union on the Employee's behalf. Employees reserve the right to request Union representation at any time during the grievance procedure. The designation of a Union representative must be in writing.

Once a representative has been designated using **Appendix A** (*AFGE Local 446 Representation Form*), all correspondence and communications will be sent to the representative with courtesy copies to the grievant. The Employer shall not contact the grievant directly, either in writing or verbally, if the grievant has designated a representative. If during the course of a grievance, a Union representative contacts the appropriate management official, the representative will inform the official in writing of his representation role and the purpose of the contact.

### **Section 5. Negotiated Procedure or Statutory Appeals**

Employees have the option to use either this negotiated procedure or a statutory appeals procedure, but not both (for A-C in this Section below). Employees exercise their option when they file a timely notice of appeal under the appropriate appellate procedure or file a timely grievance in writing under this procedure. In employment discrimination complaint actions, this election is made in accordance with procedures set forth in the Agency and EEOC regulations.

The four areas in which an Employee has the option to use either the negotiated procedure or statutory appeals procedure are:

- A. Prohibited personnel complaints under 5 U.S.C. § 2302 (b)(1) (e.g. Discrimination complaints);
- B. Removal or reduction in grade for unacceptable performance;
- C. Adverse actions (removal, reduction in grade for other than unacceptable performance, suspension for more than 14 days, furlough for 30 days or less); and
- D. Prohibited personnel practices other than a prohibited personnel practice to which 5 U.S.C. § 2302 (b)(1) applies.

### **Section 6. Computing Time Periods**

In computing time periods for Steps 1 and 2 of this Article, should the time to either file a grievance or respond to a grievance fall on a weekend, a holiday, or during a shutdown or furlough, the time limit will automatically be extended to the next business day.

## Section 7. Grievance Process

### Step 1.

- A. When a bargaining unit employee chooses to file a grievance, the grievance must be submitted, in writing, to the Employee's second-level supervisor within ten (10) business days of the date the Employee is harmed, becomes aware of, or should have been aware of the action or incident that gave rise to the grievance. Upon written request from the Union during this initial ten (10) business-day period, the Employer may extend the filing period an additional ten (10) business days. If the grievance is not submitted within the ten (10) business day time frame, it will be considered untimely.
  
- B. The grievance shall first be presented in writing using **Appendix B** (*Formal Grievance Form*). If the Employee has a Union representative, this form will be accompanied by **Appendix A** (*AFGE Local 446 Representation Form*).
  
- C. The grievance will be submitted to both the Employee's second-line supervisor and the Management Representative. The written grievance shall contain the following information:
  - 1. Grievant(s) Name
  - 2. Representative Name [if any]
  - 3. Second-Line Supervisor
  - 4. Date of the Issue or When Aware of Issue
  - 5. Specific Article, Section, Law, Rule, or Policy Allegedly Violated
  - 6. Specific Statement of the Grievance
  - 7. Desired Remedy
  - 8. Whether or not a Meeting is Requested to Discuss the Grievance
  
- D. Under normal circumstances, if a meeting is requested by the grievant or his/her representative, it should be held within ten (10) business days of submitting the grievance. The grievance official shall provide a written decision within ten (10) business days of the meeting. If no meeting is requested, the grievance official shall provide a written decision within ten (10) business days of receiving the grievance.

## Step 2.

- A. A Step 2 grievance must be filed within ten (10) business days from receipt of the Step 1 written decision to be timely. It must be filed with the Management Representative, as designated in the Step 1 decision. Under normal circumstances, if a meeting is requested by the grievant or their representative, it should be held within ten (10) business days of the Step 1 decision. The Step 2 Official shall provide a written decision within ten (10) business days of the meeting. If no meeting is requested, the grievance official shall provide a written decision within ten (10) business days of receiving the Step 1 decision. The Step 2 written decision is final and not subject to further review unless the matter is submitted to arbitration as discussed in **Article 11 (Arbitration)**.

## **Section 8. Mediation**

At any point during the grievance process, the Parties, by mutual agreement, may elect to utilize the services of a Federal Mediation and Conciliation Service (FMCS) mediator obtained for Alternative Dispute Resolution (ADR). Time periods shall be tolled during the ADR process. Enforcement of discipline, other than removal, may be held in abeyance during the ADR process.

## **Section 9. Union/Agency Grievance**

- A. In the case of any grievance which the Union may have against the Agency or the Agency may have against the Union, such grievance shall be submitted in writing to the Management Representative, or the Local President, as the case may be, within ten (10) business days after the date of occurrence of the event giving rise to the grievance or the date the Party became aware of the occurrence. It shall contain the following:
1. A statement setting forth the facts upon which the grievance is based;
  2. The specific Article and section of the agreement, law, rule, regulation or policy alleged to have been misapplied and/or misinterpreted; and
  3. The correction sought.
- B. A meeting of the Parties will be held within ten (10) business days after receipt of the grievance with a written decision by the appropriate party within ten (10) business days after the meeting.

## **Section 10. Failure to Meet Time Limits**

Failure of the grievant or the Union to proceed with a grievance within any of the time limits specified in this agreement shall render the grievance void or settled on the basis of the last decision given by the Agency, unless an extension of time limits has been agreed upon. Failure of the Agency to answer a grievance within the time limits prescribed in each step shall allow the grievant or the Union to proceed to the next higher step of the procedure, unless an extension of time limits has been agreed upon by the Parties.

## **Article 11: Arbitration**

### **Section 1. Submission Timeliness**

If the Agency and the Union fail to settle any grievance under the negotiated grievance procedure, such grievance, upon written request by either the Agency or the Union within fifteen (15) business days after issuance of the final decision, may invoke arbitration.

### **Section 2. Determination of Arbitrator**

Within ten (10) business days from the date of the request for arbitration, the requestor will ask the FMCS for a list of a list of seven (7) arbitrators. The Parties will jointly pay for that submission. The request to the FMCS will specify that the Parties request a list of seven (7) impartial persons from within the local geographical area that have Federal Sector Labor Law experience.

Under normal circumstances, once the list is received, the Parties will meet within fifteen (15) business days to agree on an Arbitrator. If the Parties cannot agree on an Arbitrator, the Agency and the Union will each strike one arbitrator's name from the list of seven (7) and will repeat this procedure until one person remains who will be duly sworn selected arbitrator. A flip of a coin will determine who strikes first.

### **Section 3. Location and Time**

The Arbitration will be held at the Employer's location from 8:00 am to 5:00 pm, Monday through Friday, subject to Arbitrator concurrence, on a date mutually agreed-upon by the Parties and Arbitrator.

### **Section 4. Witnesses**

The Parties shall exchange a list of proposed witnesses no later than ten (10) business days prior to the hearing or sooner if requested by the Arbitrator. Upon timely request by the Union, the Agency will adjust duty hours of employees to allow them to testify. The Union will be granted reasonable time to brief their witnesses. All Agency-employed witnesses on behalf of the Union shall be on official time during the proceeding. This does not preclude either party from calling witnesses after submitting the initial list. The Arbitrator has sole discretion to determine who may testify.

Witnesses will not be permitted to remain in the proceedings after giving testimony. However, a Union representative, who is also a witness, may remain during the entire proceedings.

## **Section 5. Expenses**

The Arbitrator's fees and the expenses of the arbitration, if any, will be equally borne by both Parties. If prior to the arbitration hearing or decision, the Parties resolve the grievance the cancellation fee will also be shared equally. Each party will bear the expenses of its own witnesses who are not employees and will be responsible for arranging for appearance of those witnesses at the hearing.

## **Section 6. Transcription Costs**

When a formal hearing is used, verbatim transcription will be utilized if agreed to by both Parties. The cost of this transcription service will be equally divided between both Parties. If the Parties cannot agree to share the cost equally, either party may utilize verbatim transcriptions at its own expense. Either party may request to file post-hearing brief, subject to the Arbitrator's approval.

## **Section 7. Arbitration Decision**

The Arbitrator will be requested to render his/her decision as quickly as possible after the conclusion of the hearing or after the submission of closing briefs, if applicable. The Arbitrator shall confine himself/herself to the precise issue submitted for arbitration and shall have no authority to determine any other issues not so submitted to him/her. However, the Arbitrator shall have authority, in accordance with applicable laws, rules, or regulations, to include the awarding of back pay and attorney fees in accordance with 5 U.S.C. § 5596 (*Back Pay*). In matters covered under Title 5 U.S.C. § 4303 (*Actions Based on Unacceptable Performance*) and § 7512 (*Adverse Actions*), which have been raised under this procedure, an Arbitrator shall be governed by Title 5 U.S.C. § 7701 (*Appellate Procedures*).

## **Section 8. Binding Decision**

The decision and award of the arbitrator will be final and binding except that either party may file an exception to the award as provided in 5 U.S.C. § 7122 (*Exceptions to Arbitral Awards*). Arbitration awards shall be fully implemented in a timely manner. The Parties retain their rights under 5 U.S.C. § 7122, 5 U.S.C. § 7123 (*Judicial Review: Enforcement*), and 5 U.S.C. § 7702 (*Actions Involving Discrimination*). The filing of an exception to the FLRA will serve to stay implementation of any award until the FLRA accepts or denies the appeal.

## **Section 9. Award Disputes**

Any dispute over the application of an Arbitrator's award will be returned to the Arbitrator for settlement, including remanded awards.

## **Section 10. Time Limit Extensions**

All time limits in the arbitration procedure may be extended by mutual consent.

## **Article 12: Disciplinary Actions**

### **Section 1. Introduction**

This Article applies to all Employees who have completed the applicable probationary or trial period, as appropriate.

### **Section 2. Discipline**

- A. The Parties recognize that discipline may be progressive in nature if it is to correct the conduct of an offending employee. It is understood, however, that progressive discipline need not follow any specific sequence of disciplinary actions and that major offenses may be cause for severe action, including removal, irrespective of whether previous disciplinary or adverse actions have been taken against the offending Employee.
- B. In effecting actions, the Employer shall give due regard to the existence of mitigating and aggravating circumstances. No Employee will be disciplined except for such cause as will promote the efficiency of the service.
- C. Disciplinary actions will be proposed as soon as practicable under the following circumstances:
  - 1. after the Employer becomes aware of an alleged infraction;
  - 2. if an investigation is conducted, after the Employer receives an investigative report from an investigating authority;

### **Section 3. Inclusions and Exclusions**

- A. For purposes of this Article, disciplinary actions include suspensions for fourteen (14) calendar days or fewer.
- B. Disciplinary actions exclude counseling, warnings, and other similar actions, whether oral or in writing; and oral admonishments. However, written admonishments are to be considered disciplinary for the purpose of applying “progressive discipline” in a particular situation.

#### **Section 4. Disciplinary Action Process**

When the Employer proposes to take disciplinary action against an Employee, the following procedures will apply:

- A. Advance written notice of the proposed action that specifies the reasons for the proposed action will be provided.
- B. The Agency will provide the Employee with the material that was relied on in proposing the suspension.
- C. The Employee has not less than 24 hours, but no more than five (5) business days to respond orally and/or in writing and to furnish affidavits and other documentary evidence in support of their response (e.g., medical documentation, etc.). The Deciding Official may extend the reply period if s/he determines that good cause exists for an extension based on extenuating circumstances. The Employer will designate an official to hear the Employee's oral response who has the authority to make a final decision on the proposed adverse action. The right to answer orally in person does not include the right to a formal hearing with examination of witnesses.
- D. The Employee is entitled to be represented by a Union representative, an attorney, or other appropriate representative. If the Employee elects to have a representative, he/she must inform the Deciding Official or their designee, in writing, of the representative's name and contact information.
- E. Oral reply meetings where the Employee and the Deciding Official are within the same commuting area may be conducted in person at the Employer's location or remotely (e.g., teleconference, web-conference, video conference), at the discretion of the Employer. Where the Employee and Deciding Official are not in the same commuting area, the meeting will be conducted remotely, absent mutual agreement otherwise.
- F. The Employee's representative will participate either in person or remotely, at the choice of the Employee. However, the Employer will bear no costs associated with this travel.
- G. A written decision and the specific reasons will be issued to the Employee at the earliest practicable date. Under normal circumstances, this decision will be rendered within five (5) business days.

- H. The written decision will identify the dates of the suspension, if applicable, and any rights the Employee may have, including a statement of the Employee's right to challenge the actions in one of the following two procedures:
1. A grievance filed under this agreement; or
  2. A formal complaint of discrimination filed under the Administrative or EEO process.

An employee may elect only one of the procedures above. Once an employee has elected one of the procedures listed above, they may not change thereafter to a different procedure.

### **Section 5. Nexus**

In any case where the charges are premised upon off-duty misconduct, the proposal and decision will describe the relationship (often referred to as the "nexus") between the misconduct and the Employee's position.

### **Section 6. Letters of Reprimand**

A reprimand is a written letter to an Employee based on unacceptable conduct or poor performance. Prior notice is not required before the issuance of a reprimand. A reprimand shall state the specific reasons for the action. A reprimand will remain in an Employee's Official Personnel Folder (OPF) for up to two years from the date of issuance, but may be removed by the Employer, at its sole discretion, anytime within the two-year period. A reprimand shall inform the Employee of his/her appeal/grievance rights as required by law.

### **Section 7. Alternative Discipline**

The Parties agree that alternative discipline may, under the right circumstances, be an efficient and effective approach in lieu of or in addition to traditional discipline. The Parties may consider and/or propose an alternative form of discipline at any stage during the disciplinary process. If the Employer and the Employee and/or his/her representative come to an agreement on an alternative form of discipline, the terms of the alternative discipline will be set forth in a signed resolution/settlement agreement. The agreement may include, but is not limited to:

- A. The specific form of the alternative discipline;
- B. The date by which it is to be completed;

- C. The charged misconduct and the proposed traditional discipline;
- D. Recognition by the Parties that the alternative discipline may be referenced in any subsequent disciplinary action; and
- E. A voluntary waiver of any appeal rights the Employee may have regarding the matter.

The following is a non-exhaustive list of types of alternative discipline the Parties may consider:

- A. A leave donation by the Employee through the Employer's leave donation program equal to the amount of time that would have been spent on suspension;
- B. Attendance by the Employee at an appropriate counseling program approved by the Employer's Employee Assistance Program (EAP);
- C. Placing the Employee on leave without pay (LWOP) in lieu of a formal disciplinary action;
- D. A "paper suspension," whereby the Employee does not serve a suspension or lose pay, but the suspension may be relied on in future disciplinary actions for purposes of progressive discipline.

Nothing in this Section shall require the Employer to use alternative discipline in lieu of formal disciplinary action. The failure of the parties to reach agreement regarding the use of alternative discipline is not a bargaining impasse that could be funneled to FMCS/FSIP for resolution.

## **Article 13: Adverse Actions**

### **Section 1. Introduction**

This Article applies to all Bargaining Unit Employees who have completed the applicable probationary or trial period, as appropriate.

### **Section 2. Appeals**

- A. For purposes of this Article, an appealable adverse action is defined under 5 U.S.C. § 7512 as a suspension of more than fourteen (14) calendar days, reduction in grade or pay, furlough of thirty (30) calendar days or less, and removal.
- B. This Article is intended to be applied in compliance with 5 U.S.C. Chapter 75, and Title 5, C.F.R. Part 752, Subpart D.
- C. An appealable adverse action will be taken only for such cause as will promote the efficiency of the service.

### **Section 3. Mitigating or Aggravating Circumstances**

- A. In deciding what appealable adverse action may be appropriate, the Agency will consider relevant mitigating and/or aggravating circumstances. The Employer shall affect the discipline necessary to maintain an effective and efficient workplace. As long as required by law, the Parties agree to take into consideration what is known as the “Douglas Factors” (5 MSPR 280, 5 MSPB 313 (1981)). The Parties agree that the Douglas Factors may not be relevant in every case. Only those relevant factors will be taken into consideration in the setting of the penalty.
- B. The “Douglas Factors” are as follows:
  - 1. The nature and seriousness of the offense and its relation to the Employee’s duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.
  - 2. The employee’s job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.
  - 3. The employee’s past disciplinary record.

4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.
5. The effect of the offense upon the Employee's ability to perform at a fully satisfactory level and its effect upon supervisor's confidence in the Employee's ability to perform assigned duties.
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses.
7. Consistency of the penalty with any applicable Agency table of penalties.
8. The notoriety of the offense or its impact upon the reputation of the Agency.
9. The clarity with which the Employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.
10. Potential for the Employee's rehabilitation.
11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter.
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the Employee or others.

#### **Section 4. Procedures for Appealable Adverse Action**

When the Employer proposes to take an appealable adverse action against an Employee, the following procedures will apply:

- A. In all cases of proposed appealable adverse action, except as stated in Section 7 of this Article when there is reasonable cause to believe the Employee has committed a crime for which a sentence of imprisonment may be imposed or when otherwise required by law, an employee will be given at least thirty (30) calendar days' advance notice of the proposed action.

- B. Adverse actions will be proposed as soon as practicable under the following circumstances:
1. after the Employer becomes aware of an alleged infraction;
  2. if an investigation is conducted, after the Employer receives an investigative report from an investigating authority;
- C. This notice will provide specific reasons for the proposed action and other notices required by rule, law, or regulation. Notices of proposed appealable adverse actions cannot be grieved through the negotiated grievance procedure under this Agreement.
- D. The Agency will provide the Employee with the material that was relied on in proposing the adverse action.
- E. The Employee will notify the Employer within five (5) business days of receipt of the notice of proposed action that the Employee intends to deliver an oral or written reply, or both. An employee will be given ten (10) business days from the date s/he receives the notice of proposed action to deliver an oral and/or written reply. The Employee may furnish affidavits and other documentary evidence in support of their response (e.g., medical documentation, etc.). The Employer may extend the reply period if s/he determines that good cause exists for an extension based on extenuating circumstances.
- F. The Employee is entitled to be represented by a Union representative, an attorney, or other appropriate representative. If the Employee elects to have a representative, he/she must inform the deciding official or their designee, in writing, of the representative's name and contact information using **Appendix A (AFGE Local 446 Representation Form)** if Union representation is utilized.
- G. Oral reply meetings where the Employee and the Deciding Official are within the same commuting area may be conducted in person at the Employer's location or remotely (e.g., teleconference, web-conference, video conference), at the discretion of the Employer. Where the Employee and deciding official are not in the same commuting area, the meeting will be conducted remotely (e.g., teleconference, web-conference, video conference), absent mutual agreement otherwise.
- H. The Employee representative will participate with in the proposed action meeting either in person or remotely, at the choice of the Employee. However, the Employer will bear no associated travel costs.

- I. A written final decision and the specific reasons will be issued to the Employee at the earliest practicable date. The decision will be issued by the Employer within fifteen (15) business days after the Employee's oral reply period.

### **Section 5. Written Decision in Appealable Adverse Action**

The written decision in an appealable adverse action covered by this Article will be provided by a management representative assigned to provide a final decision on the matter. The final decision will contain a statement of the Employee's right to challenge the actions in one of the three procedures:

- A. An appeal with the Merit Systems Protection Board (MSPB) in accordance with applicable law, rule, or regulation;
- B. A grievance filed under this agreement;
- C. A formal complaint of discrimination filed under the EEO process.

An Employee may elect only one of the three procedures above. Once an Employee has elected one of the procedures above may not change thereafter to a different procedure.

### **Section 6. Paid Non-Work Status**

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

### **Section 7. Shortening Notice Period**

The Employer at his/her discretion, may shorten the notice period when it invokes the provisions set forth in 5 C.F.R. Part 752.404(d)(1). This provision may be invoked even in the absence of judicial procedure or action if the Employer has reasonable cause to believe that the Employee has committed a crime for which a sentence of imprisonment may be imposed.

### **Section 8. Nexus**

In any case where the charges are premised upon off-duty misconduct, the proposal and decision will describe the relationship (often referred to as the "nexus") between the misconduct and the Employee's position.

## **Section 9. Alternative Discipline**

A Last Chance Agreement (LCA), in which the Employer agrees to hold an adverse action decision in abeyance in exchange for an Employee's:

- A. Commitment to abide by a certain set of behaviors or conditions for a set period of time as determined by the Employer;
- B. Waiver of his/her rights to challenge the decision; and
- C. Agreement that if the Employee fails to fulfill the terms of the agreement, the decision will be implemented without further appeal.

## **Article 14: Performance Plans and Appraisals**

### **Section 1. Purpose**

The purpose of the Performance Management System is to improve employee and organizational performance. It is the sole right and responsibility of management to rate employees' performance and to determine the number of rating levels and critical performance elements and standards applicable to each employee's position.

The Agency's Performance Appraisal form states that *the performance plan and position description reflect similar objectives, duties and responsibilities*. The Parties recognize the dependency of performance plans upon consistency with the Employee's Positions Descriptions, consistent with **Article 35** (*Position Descriptions*).

Pursuant to 5 U.S.C. § 2105 (a) and the Federal Acquisition Regulation (§ 7.5, *Inherently Governmental Functions*), a Bargaining Unit Employee cannot be supervised by a non-Federal employee (i.e., a contractor).

### **Section 2. Annual Review of Appraisal Template**

The Employer will review the Performance Appraisal form template annually. The Employer will provide a copy of the template document to the Union whenever changes are made, subject to the Union's right to bargain over any such changes consistent with law.

### **Section 3. Forms**

The Performance Appraisal system and related forms cover all Bargaining Unit Employees covered by this Agreement.

### **Section 4. New Performance Plans**

The Employer, in the exercise of its exclusive management right, will establish critical elements and performance standards for its employees.

### **Section 5. Procedures**

- A. All Performance Elements, standards, and progress reviews are determined by management and issued to employees during the performance year. Under normal circumstances, Performance Plans for employees are established and signed within 60 days after the start of the Fiscal Year.

- B. An Employee must be on a performance plan for a minimum of 120 calendar days in order to be rated. However, this does not preclude the initiation of an Opportunity to Demonstrate Acceptable Performance (ODAP) in a shorter period of time, consistent with **Article 15** (*Actions Based on Unacceptable Performance*) and without a rating if the Employee is demonstrating unacceptable performance in fewer than 120 calendar days from the receipt of new performance standards.
- C. The Supervisor and Employee should discuss goals and work expectations for the rating period. Discussions may cover the Employee's official duties and responsibilities; organizational goals and objectives; the type of performance necessary to achieve each rating level, and the Employee's goal for the future. Additionally, these discussions will include an identification of cascading goals for which the Employee is also responsible. The Agency agrees that it is important for supervisors to communicate with employees to set relevant, achievable goals that support the organization's mission. Each employee should actively participate in developing his/her performance plan for the appraisal period. Supervisors shall clearly communicate expectations and metrics.
- D. The Supervisor and the Employee shall participate in one progress review during the rating period, during which the Supervisor shall discuss the Employee's performance. Under normal circumstances, a mid-term progress review is conducted with employees by the end of April during the Fiscal Year.
- E. Employees will receive a complete copy of the performance plan, the mid-term review, and the end-of-year appraisal.

## **Article 15: Actions Based on Unacceptable Performance**

### **Section 1. Introduction**

- A. This Article pertains to all employees of the bargaining unit who have completed a probationary or trial period. The Employer has the sole discretion to determine if an employee's unacceptable performance shall be addressed through the procedures identified in 5 C.F.R. Part 432 (*Performance-Based Reduction in Grade and Removal Actions*) or 5 C.F.R. Part 752 (*Adverse Actions*). The Article is only related to actions initiated under 5 C.F.R. Part 432.
- B. No employee will have an action under 5 C.F.R. Part 432, proposed against him or her that relies on a critical element under which he or she has not been working for at least the minimum appraisal period of 120 calendar days or where performance expectations have not been communicated to the Employee consistent with the requirements of law and terms of this Agreement.

### **Section 2. Establishment of Performance Expectations**

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

### **Section 3. Opportunity to Demonstrate Acceptable Performance**

- A. When an employee's performance becomes unacceptable in one or more critical elements, the Employee will be provided an opportunity to demonstrate acceptable performance (ODAP) in the critical element(s) at issue. The ODAP notice will comply with law, regulation, and applicable policy.
- B. The minimum initial time period for an ODAP for Bargaining Unit Employees is thirty (30) days up to a maximum of sixty (60) days. Exceptions to the maximum 60-day time period may be granted when warranted. Principal Human Resources Managers (PHRMs) are delegated the authority to grant exceptions (to the maximum 60-day period) for up to an additional 30 days (up to a total of 90 days). Requests for exceptions beyond the PHRM 30-day extension must be submitted to the Director, OHRM for review and approval. The OHRM Director may grant extensions in 30-day increments.

- C. A grievance may not be filed on either the substance or procedural aspects of this ODAP notice until a final decision is issued.
- D. At the end of the ODAP, the Employer will render a written final decision. The decision will be issued by the Employer within fifteen (15) business days after the Employee's oral reply period.

#### **Section 4. Written Proposal by the Employer**

- A. An employee whose reduction in grade or removal is proposed under this Article is entitled to a thirty (30)-day advance written notice of the proposed action in accordance with law, regulation, and any applicable policy.
- B. Proposed removal notices must include specification of the critical element(s) failed, instances of failure that occurred during the ODAP period, and a recitation of the Employee's rights. Documentation to support the instances of failure, along with the Employee's performance plan, must be attached to the notice.

#### **Section 5. Employee Response to Proposal**

- A. The Employee, or his/her designee, will notify the Employer within five (5) business days of receipt of the notice of proposed action that the Employee intends to deliver an oral or written reply, or both. An employee will be given ten (10) business days from the date s/he receives the notice of proposed action to deliver an oral and/or written reply. Reasonable requests for extensions will be granted. The Employer, at his/her discretion, may grant additional time on a case-by-case basis.
- B. An employee must inform the Deciding Official, in writing using **Appendix A (AFGE Local 446 Representation Form)** if represented by the Union, if s/he is represented and provide the appropriate contact information for the representative.
- C. Oral reply meetings where the Employee and the deciding official are within the same commuting area may be conducted in person at the Employer's location or remotely (e.g., teleconference, web-conference, video conference), at the discretion of the Employer. Where the Employee and deciding official are not in the same commuting area, the meeting will be conducted remotely (e.g., teleconference, web-conference, video conference), absent mutual agreement otherwise.
- D. The Employee representative will participate either in person or remotely, at the choice of the Employee. However, the Employer will bear no costs associated with this travel.

## **Section 6. Challenging Removal or Demotion**

- A. An employee may challenge a removal or demotion decision under this Article in only one of the following ways:
1. By filing an appeal with the MSPB in accordance with applicable law and regulations.
  2. By filing a grievance under this agreement; or
  3. By filing a formal complaint of discrimination filed under the administrative EEO process if the Employee is alleging discrimination covered by 5 U.S.C. § 2302 (b)(1).
- B. The final decision letter issued to the Employee will contain a statement of his or her right to challenge the action in one of these (3) ways. Once an employee has elected one of these procedures, the Employee may not change thereafter to a different procedure.

## **Section 7. Paid Non-Work Status**

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

## **Article 16: Probationary Employees**

### **Section 1. Purpose**

- A. The probationary period is a final and highly significant step in determining an Employee's suitability for Federal service. During the probationary period, an Employee's conduct and performance will be observed; a background investigation will be conducted; and an Employee may be separated from the Federal service without notice for conduct and/or performance failures without undue formality.
- B. It is recognized that new employees may require additional assistance and/or counseling during their probationary period. To be retained, employees must be able to demonstrate his or her ability to perform successfully the duties assigned and maintain acceptable conduct as identified in the Standards of Conduct for a Federal employee. Probationary employees are held to the same standards as other employees.

### **Section 2. Performance Reviews**

Probationary employees are entitled to the same performance reviews as other employees. Employees are encouraged to discuss and receive updates on their performance with their supervisors.

### **Section 3. Termination**

- A. When the Employer determines that a probationary employee is to be terminated for performance or conduct, the Employer will notify the Employee of the termination. A written notice will be provided to the Employee.
- B. If the probationary employee believes that her or his termination is based on discrimination, the Employee may pursue established Equal Employment Opportunity Commission (EEOC) complaint procedures.
- C. Federal law allows probationary employees to appeal to the MSPB if they are terminated for partisan political reasons or because of their marital status. Probationary employees may also appeal to the MSPB for limited procedural reasons.

## Article 17: Awards

### Section 1. Introduction

All awards of the Employer shall be issued in accordance with all applicable law, regulation government-wide rule, and department policy. All awards are contingent upon the availability of funds and budgets and are the exclusive right of Management. Awards are not guaranteed and are based solely at management's discretion.

### Section 2. Performance Awards

- A. Performance awards are method of promoting productivity and efficiency.
- B. The Employer shall follow the guidelines of 5 U.S.C. § 4505a, 5 C.F.R. Part 451.104 and all other applicable laws.
- C. Employees covered by this agreement shall not receive both a Performance Award, including performance-based salary increases and an Incentive Award for the same performance.

### Section 3. Incentive Awards

- A. Incentive awards program are a management tool to recognize employee performance and covers superior accomplishment award for special acts or services, length of service awards, and a variety of honor awards for outstanding work performance throughout the service year.
- B. Incentive awards are appropriate to recognize employee accomplishments and contributions. Incentive awards include but are not limited to:
  - 1. Time off Awards;
  - 2. Special Acts;
  - 3. Awards for non-recurring contribution(s);
  - 4. Awards for scientific achievement(s);
  - 5. Awards for particularly difficult assignment(s);
  - 6. Awards for special initiatives; or
  - 7. Any other work-related award (e.g., merchandise awards, etc.).

#### **Section 4. Time Off Awards**

- A. Time off awards can be used as an alternative tool in conjunction with cash awards as an alternative means of recognizing superior accomplishments.
- B. A time off award may not be converted to a cash payment.
- C. Full-time employees may not be granted more than 80 hours of time off during a single leave year.
- D. Part-time employees shall be considered for time off awards based on their tour of duty.
- E. The determination to award time off award is a management right at its sole discretion.

## Article 18: Merit Assignment Program

### Section 1. Procedures

This Article applies to bargaining unit positions. It is agreed that all merit promotion actions to bargaining unit positions and all other personnel actions set forth in Section 2 below, will be made using systematic and equitable procedures on the basis of merit and from among properly ranked and certified candidates or from other appropriate sources without regard to race, color, sex, national origin, marital status, age, religion, sexual orientation, labor organization affiliation or non-affiliation, or non-disqualifying physical handicap. This Agreement takes precedence in promotions to bargaining unit positions over any conflicting document, policy or plan.

### Section 2. Inclusions and Exclusions

- A. When merit promotion procedures are to be used, it is understood that this Article applies to all merit promotion actions to bargaining unit positions not specifically excluded in Section 2.B below. Examples of personnel actions covered are:
1. Filling a position by appointment (selection) that results in a promotion to a higher grade than previously held;
  2. Temporary promotions in excess of 120 days;
  3. Reassignment or demotion to position with more promotion potential ("a position with more promotion potential" is one which the Employer may make promotions, without further competition, to the highest grade in the career ladder) than a position previously held on a permanent basis in the competitive service;
  4. Transfer to a higher-graded position or a position with more promotion potential than a position previously held on a permanent basis in the competitive service;
  5. Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service; and
  6. Details to a higher grade or position with higher promotion potential for more than 120 days.

- B. The competitive procedures set forth in this Article will not apply to the following:
1. A temporary promotion, or detail for 120 days or less to a higher-graded position or one with known promotion potential;
  2. Promotion resulting from the upgrading of a position without significant change in duties and responsibilities due to issuance of a new classification or the correction of a classification error;
  3. A position change permitted by reduction-in-force regulations;
  4. Promotion within career ladder for which competition was held at an earlier date;
  5. Promotion of the incumbent to a position that reclassified at a higher grade due to the accretion of additional duties and responsibilities;
  6. Consideration of a candidate not given proper consideration in a competitive promotion action;
  7. Promotion, reassignment, demotion, reinstatement, detail, or transfer to a position having no higher promotion potential the potential of the position the Employee currently holds or previously held on a permanent basis; and
  8. Promotion of an Employee to grade previously held on a permanent basis, provided that the Employee was not demoted or removed for performance or conduct reasons.

### **Section 3. Applicant Search**

- A. In the initial search for qualified applicants the minimum area for consideration generally will be sufficiently broad enough to ensure the availability of at least three high quality candidates, taking into account the nature and level of the position being announced.
- B. The area of consideration may be restricted to allow for targeted hiring from various sources, provided there is a good faith basis that the search will result in sufficient candidate pool. For example, an organizational element, or certain categories of applicants, such as Veterans or military spouses.

#### **Section 4. Position Announcements**

- A. All positions which are filled through the competitive merit promotion procedures of this Article may be publicized through vacancy announcements issued under the authority of the servicing Human Resources Center (HRC). All vacancy announcements, depending upon the area of consideration, may be posted on the Internet at <https://www.usajobs.gov/> via mandatory posting of vacancies through the Office of Personnel Management (OPM). Employees may voluntarily sign up for email alerts, if offered, when future vacancies are posted through the USAJOBS website.
- B. Typically, vacancy announcements under this article will be open for a minimum of ten (10) business days.
- C. When a vacancy announcement is anticipated to receive a high number of highly qualified candidates, the vacancy announcement may include a cut-off point, by limiting the announcement open period or number of applications received. For example, *'due to the high volume of applications we anticipate for this position, this announcement will close the day (at midnight) the 100th application is received or after 10 business days- whichever comes first.'*
- D. Vacancy announcements limited to Career Transition Assistance Program (CTAP) and the Interagency Career Transition Assistance Program (ICTAP)-only eligible employees may be opened for less than ten (10) business days.
- E. At a minimum every vacancy announcement will comply with the requirements of 5 C.F.R. Part 330.104 and may include the following:
  - 1. An estimate of the amount of travel, if applicable;
  - 2. Bargaining unit status.

#### **Section 5. Applying for Positions**

- A. Employees who wish to be considered for a posted vacancy must apply by submitting information and/or documents required in the vacancy announcement.
- B. To be considered for a vacancy, candidates must submit all required application materials in such a way that the information provided is complete, accurate, legible, and timely. Incomplete and late applications will not be considered.

- C. If an employee requires a reasonable accommodation to apply for a position, they may contact the issuing HRC prior to the closing date for assistance. Employees may request, and may be granted, assistance with automated staffing system. Such reasonable assistance will be on duty time.

## **Section 6. Qualifications**

- A. Candidates will be evaluated against basic eligibility requirements, selective placement factors, and other appropriate criteria established for the position.
- B. The servicing HRC will determine which applicants meet the established minimum qualifications for the position at each announced grade.

## **Section 7. Rating and Ranking**

- A. Rating and ranking of applicants will normally be accomplished using the automated staffing system. The initial screening of candidates to determine eligibility (i.e. “minimally qualified”) will be accomplished through the automated self-certification process in which the applicant will respond to a series of ranking questions included in the vacancy announcement. Under the automated staffing system, all applications will be rated by the system and the servicing HRC representative will ensure that the applicants (a) meet the minimum qualification requirements and, (b) support their responses to the automated staffing system questions in their resumes and narrative responses.
- B. An employee who applies for a position and is found eligible may be notified after the establishment of a roster or a Best Qualified list if the Employee supplied an e-mail address during the application process.

## **Section 8. Merit-Based**

- A. The selecting official will make a selection based on merit-based factors without personal favoritism, without discrimination, and without consideration of non-merit factors. An employee’s balance of annual or sick leave may not be used by a selection official as a reason for selection or non-selection of that candidate. This does not preclude the consideration of existing abuse of leave, as evidenced by the imposition of sick leave restriction on the Employee, and its effect on the Employee’s ability to perform the requirements of the position.

- B. The selecting official will make the decision to select or not to select as soon as possible, after the interview process, if utilized, is completed.

### **Section 9. Post-Selection Procedure**

- A. Selected employees within NCEI, Asheville, NC will normally be released for promotion to the new position one full pay period after the releasing official has been notified of the selectee's official offer and acceptance of the position.
- B. Other personnel actions covered under Section 2 of this Article will be released as necessary in a manner that promotes the needs of the mission, but typically not longer than two full pay periods.
- C. Compelling reasons may delay the reporting date; in such a situation, the action will be affected on the earliest possible date.
- D. All actions covered by this Article shall be taken in accordance with applicable law.

### **Section 10. Information to Applicants**

Following completion of the selection process and upon written request to the servicing HRS, employee-applicants will be provided the following information about a position announced under this Article for which they applied in a timely manner:

- A. Whether or not they met the minimum qualification requirements for consideration;
- B. Whether or not they ranked in the group from which the final selection was made (the "best-qualified" list).
- C. If the Union or the Employee feels that there is a discrepancy in the hiring process, the Union President may meet with the Management Representative and Hiring Official to discuss the selection process.

### **Section 11. Known Promotion Potential**

If a position has 'Known Promotion Potential' (KPP), the ability for an employee to advance to the higher grade (e.g., band II to band III) will be based on their annual performance increases, and not otherwise restricted other than a one-year limit on moving into the higher grade after initial hire.

## **Article 19: Reduction-In-Force (RIF), Transfer of Function, and Reorganization**

### **Section 1. Notification**

The Employer will notify the Union after the final decisions have been made to conduct a RIF, transfer of function, or a reorganization which would adversely affect bargaining unit employees. All actions covered by this Article shall conform to Federal, Department, and NOAA laws and regulations. Due to the sensitive nature of this process, the Parties agree to maintain strict confidentiality until negotiations are completed between the Union and the Employer and official notice has been issued by the Employer. The RIF will be conducted in accordance with the language in 5 C.F.R. Part 351.

### **Section 2. Reduction-In-Force (RIF)**

In the event of a RIF, the Employer will provide the following information to the Union President or his/her designee from the designated contacts listed in Section 2 of Article 7 (Rights and Representational Responsibilities of the Union):

- A. Retention registers as developed;
- B. Records applicable to individual actions;
- C. Staffing authorizations; and/or
- D. Directives requiring official RIF, subject to regulatory or statutory exclusion.

### **Section 3. Definitions**

For purposes of this Article, the following terms and expressions shall have the following meanings:

- A. *Reduction-In-Force*: Release of an employee from his/her competitive level, by separation, demotion, reassignment requiring displacement, when the release is required because of a lack of work, shortage of funds, insufficient personnel ceiling, reorganization, the exercise of reemployment rights or restoration rights, or reclassification of an employee's position due to an erosion of duties when such action will take effect after NCEI, Asheville, NC has formally announced a RIF in the Employee's competitive area.

- B. *Transfer of Function:* The transfer of the performance of a continuing function from one competitive area and its addition to one (1) or more other competitive areas except when the function involved is, for all practical purposes, identical to functions already being performed in the other competitive area affected or the movement of the competitive areas in which the function is performed to another commuting area.
- C. *Competitive Level:* A competitive level of a RIF consists of all jobs in a competitive area that are so similar in all important respects that the NCEI, Asheville, NC can readily move an employee from one to another without significant training and without loss of productivity or undue interruption.
- D. *Undue Interruption:* A degree of interruption that would prevent the completion of timely and quality work. For example, absent extenuating circumstances creating a delay, an ordinary work program probably would be unduly interrupted if performance of the critical elements of a position were not regained within ninety (90) calendar days.

#### **Section 4. Rights of Employees**

Bargaining unit employees affected by a RIF have the right to inspect RIF records that pertain to their individual actions, in so far as it is permissible under the provisions of laws and regulations. In reviewing these records, the Employee may, if he/she chooses, be assisted by a Union representative. Such reviews will be requested in writing at least five (5) calendar days in advance and include the name of the Union representative, if any, who will accompany the Employee. Requests will be serviced as quickly as possible on a first-come, first-served basis.

Employees who contend that the specific notice contains errors or is not in accordance with their employment history may submit their contention to the WFMO within thirty (30) calendar days of receipt of the notice. Employees who believe that the specific notice contains errors or is not in accordance with their employment history, but who need to review their OPF, may, within fourteen (14) calendar days of receiving their notice, request a copy of their OPF. Employees will be provided no less than fourteen (14) calendar days after receipt of the OPF to notify WFMO if they contend that the specific notice contains errors or is not in accordance with their employment history. The above language does not alter the provisions of the negotiated grievance procedure.

#### **Section 5. Employees Affected by RIF**

If the Employer determines that RIF procedures will be enacted, each competing employee selected for release from a competitive level will be given written notice at least sixty (60) calendar days before the effective date of such action. If it becomes necessary that the original

written notice information needs to be supplemented by additional information, the information will be provided in writing to the Employee not less than ten (10) calendar days prior to the effective date of the action. The written notice will provide the following information:

- A. The specific action to be taken;
- B. The reason(s) for the action;
- C. The effective date of the action;
- D. The Employee's competitive area, competitive level, subgroup, service computation date, and the last three annual performance ratings of record within the last four years;
- E. The place where employee may inspect the regulations and records pertinent to his/her case and the procedures to be followed;
- F. The reasons for retaining a lower standing employee in the same competitive level because of a continuing exception;
- G. The reasons for retaining a lower standing employee in the same competitive level for more than thirty (30) calendar days because of a temporary exception;
- H. Grade and pay retention information;
- I. Notice of eligibility for reemployment and other placement assistance;
- J. Information on benefits (i.e., severance pay, unemployment compensation, health and life insurance, lump sum payments); and
- K. The employee's grievance or appeal rights.

## **Section 6. Employee Assistance**

In accordance with the above, the Employer shall provide the following information to employees:

- A. On-line resources regarding vacancies; and

- B. Access to placement programs, which will include counseling for employees by qualified management personnel on opportunities and alternatives available to affected employees.

### **Section 7. Employee Use of NCEI, Asheville, NC Facilities**

Employees who are identified for transfer of function, separation, or change to a lower grade as a result of RIF under this Article will be entitled to reasonable use of the following facilities and/or services for the purpose of locating suitable employment:

- A. Telephone and fax;
- B. Reproduction equipment;
- C. NCEI, Asheville, NC computer access;
- D. Counseling and review of job resources; and
- E. Use of NCEI, Asheville, NCI e-mail system.

### **Section 8. Employee Use of Excused Time**

Employees who are identified for transfer of function, separation, or change to a lower grade as a result of a RIF under this Article shall be entitled to reasonable time while otherwise in a duty status without charge to leave for:

- A. Preparing, revising and reproducing job resumes and/or job application forms;
- B. Preparing for employment interviews within the DOC and/or other job prospects;
- C. Using the telephone to locate suitable employment; and
- D. Reviewing job bulletins, announcements, etc.

### **Section 9. Performance Appraisals**

Except for employees who are re-rated after a period allowed in 5 CFR Part 430, annual performance appraisals for purposes of retention standing will be frozen sixty (60) calendar days prior to the effective date of the action. The three (3) latest annual appraisals of record

prior to the freeze will be used to determine eligibility for additional credit toward an employee's service computation date. Only valid annual performance evaluations shall be used.

#### **Section 10. Release from Competitive Level**

When an employee is to be released from his/her competitive level, the "best offer" is made. The offer will be as close to the Employee's current grade as possible.

#### **Section 11. Employee Response to Specific Notice**

Upon receipt of specific notice to the Employee that he/she is offered a reassignment or change to lower grade or will be released from his/her competitive level, the Employee has fourteen (14) calendar days in which to accept or reject the offer made. If a position with a higher representative rate or grade (but not higher than the rate or grade of the Employee's current position) becomes available in the local commuting area on or before the effective date of the RIF, the NCEI, Asheville, NC will make the better offer to the Employee. This offer will not extend the notice period.

#### **Section 12. Details**

Employees on detail will not be released during a RIF from the position to which they are detailed but, rather, from the affected employee's permanent position of record.

#### **Section 13. Transfer of Function**

When a transfer of function occurs, the Employer may either:

- A. Solicit volunteers for transfer from among those employees in positions that have been identified for transfer. If there are not enough volunteers from among those affected employees, the Employer will solicit volunteers from the competitive area; or
- B. Offer the transfer to the Employees who are occupying the positions being transferred.

If the Employer chooses the first option, and the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area shall give preference to the volunteers with the highest retention standing. If the total number of employees who volunteer does not exceed the number of employees required to perform the function in the gaining area, inverse order of retention standing will be used to determine which employees will be transferred.

Whenever possible, affected employees who do not volunteer to be transferred shall be reassigned to vacant positions for which they are qualified within the competitive area, or separated at the conclusion of the transfer.

In the event of forced reassignments that do not meet the definition of transfer of function, the Employer will notify the Union in accordance with **Article 9** (*Mid-Term Bargaining*) at least sixty (60) calendar days prior to the effective date of the action.

#### **Section 14. Mitigating Considerations on RIFs**

In the event that the Employer determines a RIF is necessary, the Employer and the Union will attempt to fashion recommended actions to mitigate the adverse effect on employees, such as:

- A. Directed or voluntary lateral reassignments;
- B. Holding vacancies in lieu of filling positions (e.g., attrition);
- C. Limiting competition when filling positions;
- D. Reviewing employee qualifications for possible placement in other career fields; and
- E. Counseling and assisting employees in finding continued Federal employment.

## Article 20: Furlough

### Section 1. Introduction

- A. This article applies only to those employees covered under 5 C.F.R. Part 752.401(c). Except as provided for under 5 C.F.R. Part 752.404(d)(2), the Agency will take no action to furlough Bargaining Unit Employees until the Union has been notified.
- B. The parties agree that furloughs of more than thirty (30) consecutive days or more than twenty-two (22) discontinuous business days shall follow the provisions of **Article 19** (*Reduction in Force (RIF), Transfer of Function, and Reorganization*).

### Section 2. Definitions

- A. An *Administrative Furlough* is a planned event by the Agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any budget situation other than a lapse in appropriations.
- B. A *Shutdown Furlough* occurs when there is a lapse in appropriations or authorization and can occur at the beginning of a fiscal year, if no funds have been appropriated for that year, or upon expiration of a continuing resolution, if a new continuing resolution or appropriations law is not passed.
- C. *Exempt* employees are not affected by a lapse in appropriations. This includes employees who are not funded by annually appropriated funds. Employees performing those functions will generally continue to be governed by the normal pay, leave, and other service rules.
- D. *Excepted* employees are funded through annual appropriations but are excluded from furlough because they are performing work that, by law, may continue to be performed during a lapse in appropriations or authorization. Excepted employees include employees who conduct emergency work involving the safety of human life or the protection of property, or certain other types of excepted work. Emergency employees are not automatically deemed excepted employees for the purpose of shutdown furloughs.

### Section 3. Notification

An employee will be given an administrative furlough notice of at least thirty (30) calendar days in advance of the effective date of a furlough. Advance written notice and an opportunity to answer are not required for a furlough without pay due to unforeseeable circumstances, such

as sudden breakdowns in equipment, acts of god, or sudden emergencies requiring immediate curtailment of activities.

The furlough notice will:

1. State the specific reason for the proposed furlough;
2. Inform the Employee of his/her right to review the material which is relied upon to support furlough notice; and
3. Inform the Employee of his/her appeal rights according to applicable laws, rules, statutes, and the terms of this Agreement and their right to respond.

#### **Section 4. Volunteering**

When It is necessary to furlough some, but not all employees in an organizational segment, the Agency, may solicit volunteers at the affected work site. The volunteers may request LWOP for the furlough days. If a sufficient number of volunteers do not come forth, the Agency will select employees for furlough utilizing lowest SCD. Employees not furloughed must be qualified to perform the functions (as determined by the Agency) that are to continue to be performed during the period of furlough.

#### **Section 5. Schedule**

When the Agency has made a decision to furlough employees for a specified number of days during a specified period of time, employees may be provided an opportunity to submit a schedule identifying their preferences for the days they would like to take off, to accomplish the Agency goal. The Agency's operational needs will take precedence. Conflicts amongst employees will be resolved by utilizing SCD.

#### **Section 6. Response Deadline**

The employee will be given five (5) business days to respond to the furlough notice. Once the Employee has submitted a written and/or oral reply, the Agency will issue a decision in writing. The written decision will be delivered to the Employee on or before the effective date of the furlough.

## **Section 7. Cancellation of Leave**

In accordance with appropriate regulations, when an employee is designated to go into furlough status, any annual or sick leave that has been approved is canceled. Canceled or interrupted annual or sick leave is not forfeited and may be used at a later date.

## **Section 8. Allowances**

Allowances for the effects of a furlough on employees regarding assigned work will be made when applying the performance appraisal system.

## **Section 9. Return to Duty**

The Agency will normally provide sufficient notice of expected return to duty to employees to avoid any instances of employees losing pay and/or being placed in an AWOL status. However, these notices advising employees when they should return to work at the conclusion of a shutdown or furlough would have to be tailored to the specific situation, which may include advising employees to monitor OPM's website, and media outlets for notification that a continuing resolution or appropriation has been signed by the President.

## Article 21: Details and Temporary Promotions

### Section 1. Definitions

- A. The term *detail* as used in this Article means a temporary assignment of an employee to a position of the same or different classification, including unclassified duties, within the bargaining unit with the expectation that the Employee returns to the position of incumbency. An employee who is on detail is considered for pay and FTE purposes to be permanently occupying his or her regular position. Therefore, there is no change to the Employee's grade or salary while serving on the detail.
- B. The term *temporary promotion* as used in the Article means a temporary assignment for a specified period of time to a position at a higher grade than the one the Employee currently holds. The Employee is expected to return to his or her permanent position upon the expiration of the temporary action. Temporary promotions cannot exceed 120 days. While serving in a temporary promotion, the Employee will be compensated at six (6) percent above their current salary.
- C. Temporary promotions are solely determined by the management needs of the Agency.
- D. The provisions of this Article apply to details of Bargaining Unit Employees covered by this agreement.

### Section 2. Beginning Detail or Temporary Promotion

- A. The Employer will detail or temporarily promote an Employee as needed to meet the needs of the service, in accordance with applicable government-wide rules, laws and regulations.
- B. The Employer may, at its discretion, temporarily promote an employee, without competition, for a period of 120 days or less in any one-year period of time. According to 5 C.F.R. § 335.103 (c)(1)(i), in considering non-competitive time-limited promotions, prior service during the preceding 12 months under noncompetitive time-limited promotions and noncompetitive details to higher-graded positions counts toward the 120-day total.
- C. The determination to detail or temporarily promote an Employee to accomplish the work of the Agency is considered an assignment of work and is not a grievable matter under this Agreement.

- D. An action which terminates a detail or temporary or term promotion and which returns the Employee to the position from which the Employee was temporarily promoted at the same grade is likewise is not grievable.
- E. A temporary promotion will be documented by a Standard Form (SF) 52 that will be maintained as a permanent record in the Employee's OPF.

### **Section 3. Ending Detail or Temporary Promotion**

The Employer retains the right to terminate a detail or temporary promotion at any time.

### **Section 4. Duration of Detail or Temporary Promotion**

When an employee is on a detail for 120 calendar days or more, the supervisor, or management designee of the detail assignment, shall provide input for the Employee's performance review in accordance with Agency policy. This input is not a rating of record but is taken into consideration by the supervisor at the end of the rating cycle.

When an employee is on a detail for 119 calendar days or less, or is a member of a team outside direct supervision of the Employee's immediate supervisor, the Employee may request feedback on his/her performance from the supervisor or team leader, for use in the Employee's annual performance appraisal. The supervisor or team leader is encouraged to provide the Employee and the Employee's immediate supervisor with written input.

### **Section 5. Union Officials**

The Employer will not force Union officials on details that would prevent Union officials from performing their representational functions. This does not prevent management from assigning a Union official to a detail or temporary promotion when the needs of the organization require, or when requested by a Union official.

## Article 22: Reassignments

### Section 1. Making Reassignments

- A. The Employer has the right to reassign employees at its sole discretion, with a notification to the Union and the Employee of no less than ten (10) business days.
- B. The Employer will strive to take efforts to minimize the adverse impact on employees involuntarily reassigned under this Article.
- C. A *reassignment* is a permanent assignment of an employee from one Bargaining unit position to another Bargaining unit position without promotion, demotion or break in service. Reassignments will be carried out in accordance with applicable law, government-wide rules, or regulations and this Article. Notwithstanding this definition, the procedures set forth in this Article apply only to substantive reassignments; they do not apply to personnel actions that are denominated as “reassignments”; but are only technical in nature (e.g. those change a position description number, etc.)

### Section 2. Voluntary Reassignment

When the Employer decides to fill a position through voluntary reassignment, the Employer agrees to comply with all applicable laws, government-wide rules, and regulations (i.e., OPM Guide to Processing Personnel Actions, Ch. 14, 14-4)

### Section 3. Reassignment Due to Abolishment of Position

The Employer agrees that when an employee has been reassigned due to the abolishment of his or her position, the Employer agrees to comply with all applicable laws, government-wide rules, and regulations.

### Section 4. Involuntary Reassignment

When the Employer determines that an involuntary reassignment of an employee is necessary, the Employer will follow all applicable laws, government-wide rules, and regulations, and will also do the following:

- A. Before making an involuntary reassignment decision, the Employer will first solicit volunteers following Section 2 of this Article.

- B. If no volunteers are forthcoming, the Employer will select, from a group of qualified employees, the Employee with the most recent Service Computation Date (SCD) for Retirement.

### **Section 5. Training**

The Employer may provide training for the reassigned employee, if necessary.

## **Article 23: Training, Career Development, and Individual Development Plans**

### **Section 1. Training and Career Development**

The Parties recognize that the training and development of employees are essential to efficient operation. Recommendations and selections will be made without regard to race, gender, sexual orientation, marital status, age, religion, handicap, or national origin. The choice of subject matter, areas for training, selection of employees, and assignment of training priorities across NCEI is a function of the Employer. Training will not interfere with operational requirements as determined by the Employer.

Each employee is responsible for applying reasonable effort, time, and initiative in increasing his/her potential value through self-development and training. The Parties will encourage employees to take advantage of training and educational opportunities which will add to their skills and qualifications.

At the discretion of the Employer, training opportunities shall be offered to employees within and across occupational or position groupings as equitably as is practicable, considering:

- A. The holistic training needs of the NCEI in order to bring about more effective performance at the least possible cost;
- B. The training needs of individual employees as they relate to overall NCEI program objectives, coupled with employee's Individual Development Plan (IDP); and
- C. The short and long-range occupation and program needs of the NCEI.

### **Section 2. Assignment of Training**

Training will be assigned in accordance with applicable government, DOC, and NOAA regulations and procedures, and will generally utilize the DOC Commerce Learning Center and other enterprise tools.

### **Section 3. Training Requests**

Requests for training will be submitted on a SF-182 for approval by the immediate supervisor prior to being sent to the NCEI Director's Office for final approval. Approval or disapproval of SF-182s will be promptly communicated to the requestor through normal supervisory channels.

Training nominations and/or approval will be based on the potential use of the training in the Employee's current position, or IDP, if any, and other criteria established by applicable laws, rules, or regulations. Nominating and approving officials will apply such criteria equitably.

#### **Section 4. Individual Development Plans (IDP)**

The Employer and the Union recognize the importance of training activities to furthering the agency mission through the enhancement of the knowledge, skills, abilities, and the potential of employees. Self-study is a useful method of training and career development. The Employer will make reasonable effort to ensure that all materials required for any approved self-study courses are made available to employees enrolled in such self-study courses.

The Employer agrees to give due consideration to Union recommendations concerning training for bargaining unit employees in the development of Center training plans, policies, and procedures.

Individual employee career development goals will be given consideration when Employer officials make decisions regarding the mission-related training and career development activities within their divisions and branches and the development of employee IDPs.

In developing an IDP, the first-line supervisor and the Employee will consider the following approaches which will provide for:

- A. Identification of job patterns and promotional opportunities commensurate with employee skills and potential;
- B. Lateral detail(s)/reassignment(s) and bridge positions for employees whose current jobs do not provide an opportunity for further advancement;
- C. Education and training to provide employees the opportunity to enhance promotional qualifications;
- D. Staffing techniques; and
- E. Elimination, whenever possible, of non-performance related impediments as promotional factors.

Employees may be reimbursed for satisfactory completion of job-related courses. Reimbursement is contingent upon obtaining pre-approval for the courses.

### **Section 5. Time and Cost**

It is further recognized that certain training is essential for the performance of duties. At their discretion, the Employer will make every reasonable effort to provide an appropriate amount of duty time to complete mandatory training.

When training is approved, the Employer will pay costs of tuition and required textbooks and other expenses as appropriate and shall pay travel costs subject to travel regulations and fiscal considerations. If travel funds are not authorized and the training would otherwise be approved, the Employee will be notified of the option of attending the training without travel reimbursement (e.g., no cost to government travel). For those courses that are graded, if any employee does not obtain a passing grade (or pass in a pass-fail course), the Employee may be required, consistent with applicable regulations, to reimburse the Employer for the cost of the training.

### **Section 6. Employee Responsibility**

The employee has the responsibility to provide grades, proof of training (SF-182s and certificates), and/or college transcripts as appropriate for inclusion in his/her OPF. This applies to courses completed prior to, as well as during, employment with the NCEI.

## Article 24: Equal Employment Opportunity (EEO)

### Section 1. Introduction

The Parties agree that the Employer will not discriminate against any employee on the basis of race, color, national origin, age, sex, sexual orientation, disabilities or religion. Toward this end, the Employer will administer an equal opportunity program (EEO) in accordance with applicable laws and regulations. The Employer shall conduct a continuing campaign to eliminate discrimination from its personnel practices and policies and employment conditions consistent with this agreement, 29 C.F.R. Part 1614 and with EEOC Management Directive 715.

### Section 2. Agency Handling

Consistent with EEO rules and regulations, the program office or staff designated by the Agency will:

- A. Receive and process individual and class complaints of discrimination, as well as provide counseling for aggrieved individuals; and
- B. Ensure that discrimination complainants are fairly and thoroughly investigated within 180 days of the filing of a formal complaint.

### Section 3. Complaint Procedures

- A. EEO issues raised under this Agreement, can be processed through the negotiated grievance procedure or through the DOC-wide administrative EEO complaint process established pursuant to and in conformance with government-wide regulations of the Equal Employment Opportunity Commission (EEOC), or in cases within its jurisdiction, in an appeal to the Merit Systems Protection Board.
- B. Once an employee has elected one of these procedures, this election is irrevocable. The employee may not decide to change thereafter to a different procedure.

### Section 4. Representation

An employee has the right to be accompanied, represented, and advised by a representative of his or her choice at any stage of the complaint process under the EEO administrative complaint process. If the Employee chooses the Negotiated Grievance Procedure (**Article 10 (Grievance Procedures)**), then the Employee may represent themselves or have a union representative. The Employee is entitled to expeditious processing of the complaint or grievance within the

time limits prescribed by regulations or by this agreement. The Employee will designate his or her personal representative in writing.

### **Section 5. EEO/Diversity**

The Employer agrees to make available the Agency's EEO/Diversity Plan to all employees. The Union may have the opportunity to provide a member to serve on the NESDIS EEO/Diversity Committee.

### **Section 6. Statistical Reports**

Upon request, the Employer agrees to furnish the Union sanitized statistical reports concerning discrimination complaints filed by Bargaining Unit Employees provided by NOAA's Office of Civil Rights.

## **Article 25: Annual Leave**

### **Section 1. Statutes and Regulations**

Employees will earn annual leave in accordance with the applicable statutes and regulations.

### **Section 2. Annual Leave Rules**

- A. Annual leave will be charged in increments of one-quarter hour and requested in increments of not less than one-quarter hour.
- B. The use of annual leave is a right of the Employee subject to the approval of the Employer, which is typically the first-line supervisor. Leave Approving Officials (LAO) may, consistent with operational demands, workload and with consideration of optimal staffing levels, determine when annual leave may be taken, refuse to grant annual leave, or, revoke annual leave that has been granted. Under extraordinary or rare circumstances, an employee may be recalled from leave to return to work.
- C. Requested leave must not be considered officially authorized until approved by the LAO. When an employee has not received advance approval for leave but is not able to report for work for personal reasons, the Employee must, by no later than his/her normal start time, speak directly to his/her LAO (or designee) or leave a voicemail and/or e-mail message, with a return number requesting leave and give the reason for not having secured advance approval. The LAO will approve or deny the leave requested in a timely manner.
- D. If leave is denied, the Employer will provide operational business reasons for the denial orally or in writing to the Employee, which may be by e-mail or in the Employer's attendance system.
- E. It is the responsibility of the Employee to request annual leave in advance. However, when an employee is unable to make the request in advance due to unforeseen circumstances, the use of leave may still be approved.

### **Section 3. Requesting Annual Leave**

- A. Employees are encouraged to submit requests for annual leave as far in advance as possible. Extended leave requests (any request for annual leave for periods of five (5) or more consecutive business days, inclusive of holidays) should be submitted in advance. Such requests for annual leave will be approved or denied prior to the date the leave is

needed, but, unless the workload can be properly assessed for the requested period, no later than ten (10) business days after receipt of the request. During period of high leave use or operational needs, the Employer may require that extended leave requests be submitted by a specific date.

- B. When an employee's request for extended annual leave conflicts with the request(s) of other employee(s) for the same date(s), the Employees affected who are equally-qualified and capable of performing the needed work during that period will first try to resolve the conflict in requests informally. If resolution is not possible, the determination will be made by the supervisor, based on seniority (Service Computation Date (SCD) for retirement).

#### **Section 4. Changing Scheduled Leave**

- A. An employee may be permitted to change scheduled leave that s/he had requested to another time. Such changes will be considered and approved in accordance with Section 2.
- B. Employees will be provided with the opportunity, where practical, to use any annual leave earned that will be in excess of the maximum allowable carryover at some time during the course of the leave year so as to avoid losing annual leave. Each employee is responsible for monitoring his/her annual leave account in order to make appropriate advance requests to the Employer for annual leave for vacation and other purposes which will contribute toward avoiding loss of annual leave.
- C. Employees, upon request, may change previously authorized annual leave to sick leave where sick leave is appropriate, in accordance with OPM.

#### **Section 5. Advanced Annual Leave**

- A. The Employer will consider and may, at its discretion, grant requests for advanced annual leave upon proper application, when:
  - 1. Non-repetitive, non-routine circumstances exist;
  - 2. The Employee is eligible to earn annual leave;
  - 3. The request does not exceed the amount of annual leave that the Employee would earn during the remainder of the leave year or the remainder of his/her appointment, whichever is shorter; and

4. The Employer has reasonable assurance that the Employee will return to duty and is not contemplating retirement or resignation.
- 
- B. Annual leave earned on a current basis may not be used except in extenuating circumstances, until the amount of annual leave advanced to the Employee has been repaid.
  - C. Employees must repay any leave advanced and not earned at the time of separation. No repayment is necessary if the separation is due to the Employee's death or disability retirement.

## Article 26: Sick Leave

### Section 1. Permissible Use

- A. Employees may use sick leave accrued in accordance with the law and regulations in the following situations:
1. Incapacity for the performance of duties due to illness or injury;
  2. Emergency medical, dental, optical or surgical examination or treatment;
  3. Prescheduled medical, dental, optical or surgical examination or treatment;
  4. Incapacity for the performance of duties due to pregnancy or birth of a child;
  5. When presence at the worksite would, as determined by the health authorities having jurisdiction or by a healthcare provider, jeopardize the health of others because of exposure to communicable disease; and
  6. The employee must be absent from duty for purposes relating to the adoption of a child, including appointments with adoption agencies, court proceedings, required travel, and other activities necessary to allow the adoption to proceed.
- B. In accordance with the requirements and limitations set forth in 5 U.S.C § 6307 and 5 C.F.R. Part 630, Subpart D, (*Family Friendly Leave Act*), employees may also use accrued sick leave;
1. To give care or otherwise attend to a family member having an illness, injury, or other condition which, if the Employee had such a condition, would justify the use of sick leave by that employee; and
  2. To make arrangements for or attend the funeral of such family member.
  3. For purposes of this section, “family member” is defined as the following relatives of the Employee:
    - a. Spouse, and parents thereof;
    - b. Children, including adopted children and spouses thereof;
    - c. Parents, and spouses thereof;

- d. Brothers and sisters, and spouses thereof; and
  - e. Grandparents and grandchildren, and spouses thereof;
  - f. Domestic partners and parents thereof, including domestic partners of any individual in b through e of this definition; and
  - g. Any individual related by blood or affinity whose close association with the Employee is the equivalent of a family relationship.
- C. In accordance with the requirements and limitations of 5 U.S.C. § 6381-6387 (FMLA), 5 C.F.R. Part 630, Subpart L, and (FMLA article) of this agreement, employees may use accrued sick leave for the following reasons:
- 1. Because of the birth of a son or daughter of the Employee and in order to care for such son or daughter;
  - 2. Because of the placement of a son or daughter with the Employee for adoption or foster care;
  - 3. In order to care for the spouse, or a son, daughter, or parent, of the Employee, if such spouse, son, daughter, or parent has a serious health condition; or
  - 4. Because of serious health care condition that makes the Employee unable to perform the functions of the Employee's position.

## **Section 2. Unanticipated Sick Leave**

- A. If the use of sick leave cannot be anticipated, all requests for approval should go to the immediate supervisor or designee at least one (1) hour prior to but no later than one (1) hour after the Employee's scheduled start time. Should the Employee be unable to reach the immediate supervisor or designee, the Employee may leave the immediate supervisor or designee a voicemail or email requesting the leave.
- B. An employee will inform his/her supervisor or designees of the anticipated duration of the absence. If the absence extends beyond the anticipated period, the Employee will inform his or her supervisor of the situation promptly for further approval.

### **Section 3. Anticipated Sick Leave**

Generally, an employee shall provide advance notice to their LAO (or designee) through a leave request for anticipated sick leave for the purpose of receiving non-emergency medical, dental or optical examination, operation, or treatment. Such requests shall normally be approved within three (3) days of receiving the request, unless the Employee's absence would create an acute workload problem. Examples of workload problems may include, but not limited to the following:

- A. An inability to complete a specific or previously assigned work project in a timely manner; or
- B. Inadequate office coverage where physical presence is necessary.

### **Section 4. Medical Certificate**

- A. An employee may be required to furnish a medical certificate (i.e., reasonably acceptable evidence to substantiate a request for approval of sick leave) if the sick leave exceeds three (3) consecutive business days. In accordance with 5 C.F.R. Part 630.201 (*Medical Certificate*), medical certificate means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment.
- B. In accordance with 5 C.F.R. Part 630.405 (*Supporting Evidence for the Use of Sick Leave*), when requested, Employees must provide administratively acceptable medical documentation as required to substantiate absences or request for leave.
- C. Where the Employer has reasonable grounds to suspect abuse of sick leave based on a pattern of usage, the Employee may be placed on sick leave restriction. The notification will be in writing and inform the Employee that no request for sick leave, or other leave in lieu of sick leave, will be approved for a stated period, not to exceed (6) months, unless supported by a medical certificate.

### **Section 5. Charging Sick Leave**

- A. Absences qualifying for the use of sick leave may be charged to annual, earned credit hours, earned compensatory time or LWOP if so requested by the Employee and approved by the LAO (or designee).

- B. An employee who becomes ill while on annual leave may have the time of illness changed to sick leave provided that the Employee notifies the supervisor on the first day of the illness and otherwise complies with the requirements of this article.

### **Section 6. Quarter-Hour Increments**

Sick leave will be charged in quarter-hour increments.

### **Section 7. Advanced Sick Leave**

Employees may request advanced sick leave if he or she has a serious health condition. Advanced sick leave will be approved or disapproved for periods of no more than thirty (30) days under the following circumstances:

- A. A written request with acceptable medical documentation as defined in 5 C.F.R. Part 339 (*Medical Qualification Determinations*) has been submitted;
- B. There is reasonable assurance that the Employee will return to duty; and
- C. The Employee is not subject to sick leave restriction.

### **Section 8. Confidentiality**

The Employer will treat as confidential any medical information given by an 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 27: Family Leave

### Section 1. Family Medical Leave Act

- A. Employees who have completed at least twelve (12) months of service and are not employed on an intermittent basis or a temporary appointment with a time limitation of one (1) year or less have the right, as established by the Family and Medical Leave Act (FMLA) and implementing regulations (5 C.F.R. Part 630, Subpart L), to twelve (12) work-weeks of leave without pay during any twelve (12) month period for one of the following:
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, parent, or other family member as described in B.1-7 below 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.
  5. Any qualifying exigency arising out of the fact that the Employee's spouse, or a son, daughter, or parent of the Employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.
- B. An employee must invoke his or her entitlement to family and medical leave, subject to the notification and medical certification requirements. In such cases, the incapacity of the Employee must be documented by a written medical certification from a health care provider. In addition, the Employee must provide documentation acceptable to the agency explaining the inability of their personal representative to contact the agency and invoke the Employee's entitlement to FMLA leave during the entire period in which the Employee was absent from work for an FMLA-qualifying purpose.

Family member means an individual with any of the following relationships to the Employee:

1. Spouse, and parents thereof;

2. Sons and daughters, and spouses thereof;
  3. Parents, and spouses thereof;
  4. Brothers and sisters, and spouses thereof;
  5. Grandparents and grandchildren, and spouses thereof;
  6. Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; and
  7. Any individual related by blood or affinity whose close association with the Employee is the equivalent of a family relationship.
- C. Under certain conditions, an employee may use the 12 weeks of FMLA leave intermittently.
- D. An employee may elect to substitute accrued or accumulated annual leave and/or sick leave for any part of the 12-week period of leave without pay described in Paragraph A of Section 1. However, this does not require the Employer to provide paid sick leave in any situation in which it would not normally provide such paid sick leave.
- E. An employee seeking leave under this Section shall provide the Employer with notice of the Employee's intention to take such leave not fewer than thirty (30) calendar days before the date the leave is to begin, unless the date of such leave is not reasonably foreseeable, in which case the Employee shall provide such notice as soon as practicable.
- F. Under 5 C.F.R. Part 630.1207 (*Notice of Leave*), the Employer may require that a request for leave under subsections A.1-5 in this Section may be supported by written medical certification written by a healthcare provider. The following procedure will be followed:
1. The Employer will provide the written documentation as provided in 5 C.F.R. Part 630.1207(b). The information on the medical certification shall relate only to the serious health condition for which the current need for family medical leave exists. The employer may not require any personal or confidential information in the written medical certification other than that required by regulations.

2. An employee must provide the written medical certification no later than fifteen (15) calendar days after the Employer requests such medical certification. The Employer's request may be in writing. If it is not practical under the particular circumstances to provide the requested medical certification no later than fifteen (15) calendar days after the date requested by the agency despite the Employee's diligent, good faith efforts, the Employee must provide medical certification within a reasonable period of time under the circumstances involved, but not later than thirty (30) days after the agency requested the medical certification.
  3. If an employee submits a completed medical certification signed by a health care provider, the Employer may not request new information. However, the Employer's medical consultant may, with the Employee's permission, contact the health care provider who completed the medical certification for the purposes of clarifying the medical certification.
  4. If the Employer doubts the validity of the medical certification, the Employer may require at the Employer's expense the Employee obtain the opinion of a second health care provider designated or approved by the Employer concerning information certified in the medical certification. Any health care provider approved by the Employer shall not be employed by the Employer or be under the administrative oversight of the Employer on a regular basis.
  5. If the opinion of the second health care provider differs from the original certification provide under subsection D.2. of this Section, the Employer may require, at the Employer's expense, that the Employee obtain the opinion of a third health care provider designated or approved jointly by the Employer and the Employee concerning the information certified in subsection D.2. of this Section. The opinion of a third health care provider shall be binding on the Employer and the Employee.
- G. All other conditions/requirements in 5 C.F.R. Part 630.1207 are applicable to leave used under FMLA.
- H. An employee may not retroactively invoke his or her entitlement to family and medical leave. However, if an employee and their personal representative are physically or mentally incapable of invoking the Employee's entitlement to FMLA in which the Employee is absent from work for an FMLA-qualifying purpose the Employee may retroactively invoke their entitlement to FMLA leave within two (2) business days after returning to work.

- I. If the Employee is unable to provide the requested medical certification before the leave begins, or if the agency questions the validity of the original certification provided by the Employee and the medical treatment requires the leave to begin, the agency shall grant provisional leave pending final written medical certification.
- J. If after the leave has commenced and the Employee fails to provide the requested medical certification within the specified timeframe, the Employer may charge the Employee as absent without leave (AWOL) or allow the Employee to request that the provisional leave be charged as leave without pay or charged to the Employee's annual and/or sick leave.

## **Section 2. FMLA for Maternity or Paternity Purposes**

- A. Employees are entitled to twelve (12) weeks of FMLA leave for maternity or paternity purposes due to the birth of a child or placement of a child with the Employee for adoption or foster care or for maternity sick leave purposes. Employees are also entitled to FMLA leave to engage in activities related to the placement of a child with the Employee for adoption or foster care. Approval of leave for these reasons will be consistent with the provisions of this Agreement and applicable statutes and regulations.
- B. Periods of incapacity due to pregnancy are considered a "serious health condition" under FMLA. Charges to sick leave are appropriate for the period of incapacitation due to pregnancy and confinement, consistent with medical requirements and applicable laws and regulations. The Employee also may request and be granted annual leave, LWOP, earned credit hours and/or compensatory time instead of sick leave for the period of incapacitation. A female employee may also substitute sick leave, annual leave, earned compensatory time, credit hours, donated leave, or any combination thereof, for any remaining time of the twelve-week FMLA LWOP entitlement, as appropriate.
- C. A parent shall be permitted to be absent on partial or full days of annual leave, sick leave, LWOP, earned compensatory time, credit hours, or any combination thereof, to aid or assist in the care of minor children or the mother of the children due to her confinement for maternity reasons. Approval of leave for these reasons will be consistent with the provisions of this Agreement and applicable law and regulation.

### **Section 3. Adoption**

For purposes associated with adoption of a child, an employee may use annual leave, sick leave, LWOP, earned compensatory time and/or credit hours. (see sick leave article for information about the use of sick leave for adoptions.) The Parties recognize that it is in the interests of both the Employee and the Employer that such requests shall be made as early as possible. The employee should submit the leave for adoption purposes as early as possible, no less than thirty (30) calendar days in advance of the prospective starting date. If the date of leave is not foreseeable (e.g. foreign adoptions) the Employee shall provide such notice as is practicable. The individual circumstances must be considered in each instance by the leave approving official; reasonable request shall be granted unless a workload or staffing problem prevents approval. Approval will be consistent with the provisions of the agreement and applicable statutes and regulations.

### **Section 4. Denials**

Whenever leave requested under this Article is denied, the Employer shall state the specific reason orally, in writing or in e-mail.

## Article 28: Other Leave

### Section 1. Leave Without Pay

Leave Without Pay (LWOP) is a temporary, non-pay status and absence from duty. All employees are eligible for LWOP regardless of length of service or whether they have annual leave to their credit. Employees will not be required to exhaust their annual leave prior to the use of LWOP. Requests to use LWOP are made in the same manner as are request for annual leave and sick leave. The Employer will examine each request closely to ensure that the value to the government or the serious needs of the Employee is sufficient to offset the costs and administrative inconvenience.

- A. In accordance with applicable law, rules, and regulations, the Employer must approve LWOP in the following circumstances:
1. Family and Medical Leave Act (FMLA) requests;
  2. Entitlements under the Uniformed Services Employment and Reemployment Rights Act (USERRA);
  3. Requests from an employee who is a disabled veteran and presenting an official statement from a medical authority that medical treatment is required in connection with the disability (provided that prior notice is given to the Employer); and
  4. Employees who are in receipt of compensation from the Department of Labor for work-related injuries or occupational diseases may not be in a pay status, and therefore must be carried in a LWOP status.
- B. In the following circumstances, requests for LWOP may be made by an employee and will be evaluated by the Employer in accordance with the terms of this article:
1. For the educational purposes when the course of study or research is in line with the type of work performed by the Employer and would continue the mission of the Employer;
  2. To serve as the elected National President or Executive Vice President of AFGE, or serve full time in an appointive position of the union; and
  3. Up to twenty-four (24) hours of LWOP during a twelve (12) month period may be used to attend to:

- a. School & Early Childhood Educational Activities;
  - b. Routine Familial Purposes; and
  - c. Elderly Relatives Health or Care needs.
- C. For all other requests for LWOP, the Employer will consider whether the value to the government, public good or the needs of the Employee are sufficient to offset the administrative inconvenience and the cost of granting the request. Such factors as increased job ability, protection or improvement of an employee's health, job performance, and retention of a desired employee may be considered. In addition, the Employer should have a reasonable expectation that the Employee will return to duty at the end of the LWOP.

## **Section 2. Excused Absences**

- A. An excused absence from duty is administratively authorized by supervisors without loss of pay and without a charge to leave.
- 1. *Voting:* The Employee, upon request due to unusual circumstances, will be authorized an amount of excused absence that will permit him/her to report for work up to three (3) hours after the polls open or leave work up to three (3) hours before the polls close, whichever requires the lesser amount of time off and provided that it does not interfere with mission requirements.
  - 2. *Donating Blood:* Employees who donate blood to the Red Cross or other recognized Blood Banks, which the Agency sponsored, will be excused from duty upon request, for a period of not more than four (4) hours, including travel, and any necessary recovery time following the donation provided that it does not interfere with mission requirements.
  - 3. *Bone Marrow and Organ/Tissue Transplant:*
    - a. An employee may use up to seven (7) days of paid leave each calendar year to serve as a bone-marrow donor;
    - b. An employee also may use up to thirty (30) days of paid leave each calendar year to serve as an organ donor. Leave for bone marrow and

organ donation is a separate category of leave that is in addition to annual and sick leave.

### **Section 3. Religious Compensatory Time**

Requests for compensatory time for religious observances will be granted unless approval of the request would interfere with the timely and efficient accomplishment of the unit's work or would prevent the availability of a sufficient number of employees to perform the unit's work.

### **Section 4. Court Leave**

An employee is entitled to paid time off without charge to leave to serve as a juror or witness. An employee is responsible for informing his or her supervisor if he or she is excused from jury or witness service for 1 day or more or for a substantial part of a day. To avoid undue hardship, an agency may adjust the schedule of an employee who works nights or weekends and is called to jury duty. (If there is no jury/witness service, there is no court leave. The employee would be charged annual leave, sick leave, or leave without pay, as appropriate.) The following duties are eligible for court leave:

- A. An employee who is summoned to serve as a juror in a judicial proceeding is entitled to court leave; and
- B. An employee who is summoned as a witness in a judicial proceeding in which the Federal, State, or local government is a party is entitled to court leave.

### **Section 5. Military Leave**

- A. Any employee who is a member of the National Guard or Reserve component of the Armed Forces shall be entitled to fifteen (15) calendar days of regular military leave in a fiscal year for active duty or active duty training as provided for in 5 U.S.C. 6323, as amended, and implementing regulations. For part-time employees, military leave is calculated according to 5 U.S.C. 6323. An employee can carry over a maximum of 15 days into the next fiscal year.
- B. Approval of the military leave request will be granted based upon the presentation of the orders directing the Employee to active duty to the leave approving official.
- C. The employee will notify the approving official as soon as possible of the anticipated leave.

## **Section 6. Veteran's Leave**

- A. Executive Order 5396, dated July 17, 1930 provides that supervisors must grant to a disabled veteran such annual or sick leave as may be permitted by law and such leave without pay as may be necessary to permit the veteran to receive medical treatment. This includes time for the Employee to take a physical examination in connection with a disability pension, to have a prosthetic device fitted, etc. The veteran must present an official statement from a medical officer of a Government hospital specifying that such treatment is necessary. Granting such leave shall be contingent upon the veteran's giving prior notice of definite days and hours of absence required for medical treatment so that arrangements can be made for handling work during the Employee's absence.
  
- B. Under the Wounded Warriors Federal Leave Act of 2015 (Public Law 114-75, November 5, 2015), an employee hired on or after November 5, 2016, who is a veteran with a service-connected disability rating of 30 percent or more from the Veterans Benefits Administration (VBA) of the Department of Veterans Affairs is entitled to up to 104 hours of disabled veteran leave for the purposes of undergoing medical treatment for such disability.

## **Section 7. Bereavement Leave**

In accordance with this Agreement and applicable regulations, an employee may be granted up to 13 days of sick leave per leave year when there has been a death in the Employee's family.

The definition of family includes the following:

- A. Spouse, and parents thereof;
- B. Children, including adopted children and spouses thereof;
- C. Parents, and spouses thereof;
- D. Brothers and sisters, and spouses thereof; and
- E. Grandparents and grandchildren, and spouses thereof;
- F. Domestic partners and parents thereof, including domestic partners of any individual in b through e of this definition; and
- G. Any individual related by blood or affinity whose close association with the Employee is the equivalent of a family relationship.

Upon request, subject to any documentation requirements, leave approving official(s) shall approve leave requests for an employee to mourn the death of a family member.

### **Section 8. Restoration of Leave**

When “use-or-lose” leave has been approved using an OPM Form 71 and is subsequently canceled by management prior to the Employee actually taking the leave, the Employee will be advised of the cancellation and the reason for such cancellation in writing per regulation. The excess annual leave will then be restored in accordance with applicable rules and regulations.

### **Section 9. Voluntary Leave Transfer Program**

As authorized by 5 C.F.R. 630, Subpart J, and agency regulations, employees are entitled to donate and receive leave for medical emergencies. By reference the definitions, eligibility criteria, and administrative provisions pertaining to a Voluntary Leave Transfer Program contained in 5 C.F.R. 630, Subpart J, are incorporated into this agreement. At the time of scheduling “use-or-lose” annual leave, employees may consider donating leave through the Voluntary Leave Transfer Program.

## Article 29: Travel

### Section 1. Laws and Regulations

Bargaining Unit Employees shall not be required to travel except under conditions and procedures prescribed by pertinent laws and regulations, including the Federal Travel Regulations. Unless organization needs require otherwise, the Employer will schedule travel during official work hours. The content of all applicable travel laws and regulations are not grievable under this Agreement. The implementation of changes to travel regulations is subject to the provisions of **Article 9** (*Mid-Term Bargaining*).

When it is necessary that an employee travel during non-duty hours, and such travel is performed under conditions that constitute hours of work as defined by applicable statute, the Employee will be paid overtime at premium rates or receive compensatory time as appropriate. The type and amount of compensation for travel during non-duty hours will be determined in accordance with applicable statute and the Employee's status as exempt or nonexempt from the Fair Labor Standards Act. Required travel of the Employee on weekends and holidays will be fully justified, with a logical justification, orally, by e-mail, or in writing to the Employee.

## **Article 30: Security, Safety, and Health**

### **Section 1. Introduction**

The Parties recognize the need for a secure, safe and healthy work environment, and to follow operating practices that will safeguard all employees and result in secure and safe working conditions as well as ensure an efficient operation. The Employer will encourage and expect all employees to comply with all security and safety rules and regulations as established by the Employer, NOAA, DOC, GSA, the Department of Homeland Security, or other authorities.

The Employer will maintain an effective and comprehensive occupational loss prevention and health program consistent with the applicable standards of the Occupational Safety and Health Act of 1970. The Union agrees to cooperate with the Employer's efforts to provide and maintain secure, safe and healthy working conditions and will encourage all employees to work in such a manner. It is recognized by the Parties that employees have a primary responsibility for their own safety and an obligation to know and observe security rules and practices as a measure of protection for themselves and others. Employees are encouraged to make recommendations through their supervisor to the Employer that will promote and emphasize security, safety, and health education, as well as identify areas which should receive increased emphasis. The Employer will, at all times, welcome suggestions from the Union and employees which offer practical and economically feasible ways to improve security, safety, and health conditions.

### **Section 2. Employee Compliance**

Each employee will comply with safety standards, rules, instructions, and orders issued by DOC and NOAA. Employees are responsible for advising the Employer when unsafe conditions arise within their work area. Reports should be made to NCEI managers. There will be no restraint or reprisal to any employee as a result of reporting an unsafe practice or condition. The Employer will investigate all reports and determine whether unsafe working conditions exist. If necessary, the Employer will take steps to correct any such unsafe working conditions.

### **Section 3. Reasonable Accommodation**

The Agency encourages all employees to take advantage of NOAA's Reasonable Accommodation Program as appropriate with law, rule, and regulation. Employees may contact NOAA's Reasonable Accommodation Coordinator for information and guidance.

#### **Section 4. Accident Reporting**

Employees are required to immediately report to their supervisor any accident or injury, major or minor, which occurs on the job. When an employee becomes ill or is injured in the performance of his/her duty, the Employee must advise the supervisor as soon as possible. In cases where the Employee is medically unable to contact his/her supervisor regarding an on-the-job injury, an employee's family member or other representative may provide the required notification. The appropriate supervisor will provide the appropriate forms to be completed to document the accident or injury and assist the Employee or other representative with the completion of the forms, if needed. The Parties recognize that the Office of Worker's Compensation Program (OWCP), under the Department of Labor, approves or disapproves compensation claims and the amounts to be paid, and that the Employer has no control over the OWCP. Regulations covering traumatic injury or occupational illness are defined in Department Administrative Order (DAO) 202-810. An employee who sustains a traumatic injury may select, within thirty (30) calendar days, the continuation of regular pay for a period not to exceed forty-five (45) calendar days in lieu of sick or annual leave.

#### **Section 5. Temporary Assignments Related to Illness/Injury**

An employee recuperating from a non-job-related illness or injury and temporarily unable to perform the duties of his/her assigned position may submit a written request to his/her supervisor for temporary assignment to productive duties commensurate with the Employee's qualifications that may be performed during the recuperation period. The Employee shall provide a medical certificate signed by a licensed/registered physician, or other practitioner, attesting to the illness or injury and the probable length of the Employee's inability to perform. The Employer will give proper consideration to the Employee's request. Such assignments, if granted, shall not be for more than thirty (30) calendar days in duration. A request for a longer period must be reviewed and approved by the NCEI Director or Deputy Director, whose decision is final.

#### **Section 6. First Aid Kits**

The Employer will ensure that well-stocked first aid kits are distributed and maintained in each division and staff area of the NCEI, Asheville, NC.

#### **Section 7. Danger to Health and Safety**

Any bargaining unit employee who is assigned to a job or task which he/she reasonably believes presents a clear and present danger to his or her health or safety must immediately notify his/her supervisor in writing. The appropriate Employer officials will determine

whether the job or task is safe. If the Employee is not satisfied with the determination, he/she may elevate the decisions to the next level of supervisory personnel.

The Agency will request that GSA and/or Federal Protective Service provide active shooter training annually for all NCEI, Asheville, NC employees.

### **Section 8. Employee Safeguards**

In the event of construction or remodeling within the occupied facility, the Employer, by working with the local GSA office to the extent it is able, will use its best efforts to ensure that proper safeguards are maintained to prevent injury to employees. If the Employer has control over, and advance knowledge of, any use of chemicals or pesticides at the facility, the Union will be notified as soon as practicable of the nature and the purpose of their use.

### **Section 9. Emergency Evacuation Plan**

An Emergency Evacuation Plan will be in place at all times and reviewed annually at the Employer's facility. Fire evacuation plans shall be conspicuously displayed in work areas. The Emergency Evacuation Plan will include specific instructions on the exit of handicapped personnel employed by the Employer. The Employer shall provide for an annual review of evacuation procedures by all personnel and provide training in the operation of fire extinguishers and other related equipment at the facility as appropriate.

### **Section 10. Handicapped Employees**

To ensure that the safety and health of handicapped employees are met, the Employer, in conjunction with GSA, will make facilities accessible to the handicapped in accordance with applicable Federal laws, rules, and regulations.

### **Section 11. Relocation**

If a temporary or permanent relocation of a function occurs, the Employer will ensure that the new area meets all applicable safety and health requirements.

### **Section 12. Paint and Other Hazards**

The Parties agree that exposure to chemicals, paint fumes, insecticides, construction materials, and cleaning products can have a harmful effect on the health of employees. Should it become necessary to use these substances during duty hours, employees will be evacuated from the area and allowed alternate work arrangements until the effects have

abated. The Parties agree that there will be an immediate cessation of work in areas that are found to be unsafe by the Employer.

### **Section 13. Healthy Workplace**

The Parties agree that employee wellness and the investment in programs to maintain employee health contributes directly to sustained productivity and reduction of lost employee time due to illness. Therefore, the Employer agrees to encourage participation in such programs as weight reduction, stress reduction and management, nutritional counseling, smoking cessation, prevention of injuries, and exercise.

### **Section 14. Ergonomics**

The Employer agrees to reasonably provide employees work space that has been ergonomically designed. This includes work surfaces, lighting, air-flow, seating (with adjustable lumbar support), wrist supports, and foot rests.

### **Section 15. Reports**

The Employer will give the Union a copy of all reports (routine or special), generated or received by it, concerning matters related to the health and safety of its Employees. Such reports may include, but are not limited to, those concerning reportable incidents, accidents, and workers' compensation data.

## Article 31: Communications and Facilities

### Section 1. Office Space

- A. The Parties recognize the need to utilize space in a manner consistent with space saving initiatives aligned with the Department and other Federal initiatives to reduce office footprints and fiscal impacts.
- B. The Employer agrees to provide the Union dedicated office space for the designated recognized entity, AFGE 446, for the conduct of official business. Under no circumstances will Union office space be required to exceed 170 square feet in the aggregate. Use of this space will be subject to paragraph C below.
- C. The Union agrees to pay the Standard Level User Charge (SLUC) for its use of the Employer's space as determined by the Agency. The rental amount will be calculated to include a reasonable estimate of the cost of furnishings and other Agency resources provided for use by the Union pursuant to this Article. The Agency will provide to the Union the cost of any space permitted for Union use for the upcoming fiscal year prior to the beginning of the fiscal year. The Union agrees to remit the cost of such space at least thirty (30) calendar days prior to the beginning of the new fiscal year or when otherwise due, if it desires to rent or continue renting the space for the upcoming fiscal year. The Union agrees to pay such rent when due or immediately cede access to the space. Charges will be assessed and paid before the Union occupies any dedicated private space. Use of space only intermittently will not impact the rental cost of any space by the Union.
- D. The Employer agrees to provide access, on a space-available basis, to conference room space reservations for the conduct of official business for appointed AFGE representatives. These space reservations are to be used for Union meetings with employees, to include during employees' non-duty status. Union representatives will be responsible for scheduling and canceling reservations as needed and failure to adhere to cancellation protocols could result in denial of future reservations. The Union will have the same access to the reservations as other employee groups, subject to the needs of the Employer to conduct business.
- E. All Union office space is subject to audit requirements and other internal security requirements as any other Department space is, and when needed, Agency officials will not be denied entry to the space, if applicable.

- F. The Employer agrees that, where available, the Union may have access to the use of Video Teleconferencing and Computer Training Rooms for Union-sponsored Training, as approved by the Employer. The Union will have the same access as other groups.
- G. Paragraphs B and C of this Section apply only in the event that the Department of Justice issues an opinion stating the Agency is permitted to charge and collect rental payments from the Union. Until such opinion is received, the Agency shall provide no space for the Union.

## **Section 2. Furnishings and Equipment**

- A. The Union shall be responsible for furnishing its own equipment (laptops, mobile devices, printers, etc.) as to relieve any burden of audit accountability and internal security requirements by the Department. The Union will be provided Wi-Fi access by the Agency, where available.
- B. Beginning with the Effective Date of this Agreement, government-issued equipment may no longer be used by Employee representatives for representational purposes. Any equipment issued to a Union representative solely for representational purposes must be returned.

## **Section 3. Telephones, Computers, and Mail**

- A. At the sole discretion of the Employer and with prior approval from the Employer, Union representatives shall be permitted reasonable use of public hardline telephones provided by the Employer, along with the Agency's e-mail, internet and computer, and internal physical mail system when necessary for conducting labor-management activities (e.g., communication of information) not inclusive of internal union business (e.g., solicitation of membership, dues collection, and Union elections). Consistent with the postal and Agency regulations, the Union shall have use of Employer-metered mail limited to labor relations representational matters but not including matters relating to internal Union business. This, however, does not permit Employee representative to use other types of mailing such as express, overnight, registered, certified mail, etc. Management has the right to cancel or deny at any time the use described in this section.
- B. Official publications of the Union, which may include newsletters, fliers or other notices, may be distributed, with prior approval by the Employer, on Employer property by Employee representatives during non-duty time.

- C. Where available, the Employer agrees to provide the Union physical space for official Union materials on public bulletin boards. Prior to posting, all such union materials must be approved by the Management Representative or designee and will be limited to the designated space and shall be properly identified as official Union issuances.
- D. The Employer agrees to allow the Union to use intranet web resources for informational purposes about the Union (e.g., list of officials, key events, etc.). The web resources are not to be used for internal Union business and is to be tightly managed by Union officials.
- E. The Union is responsible for the content of all Union materials posted or distributed, whether in digital or non-digital form:
  - 1. Union posting will be maintained in an orderly condition;
  - 2. Posted material shall be pertinent to the conduct of workplace business and not related to partisan political matters;
  - 3. Posted and distributed Union materials shall not malign or negatively refer to specific managers or individuals.

#### **Section 4. Discretion in Use of Employee Documents**

- A. Regardless of jurisdictional laws, absent written consent from all Parties (with the exception of court reporting transcripts in the conduct of official business), the recording (audio, visual, or any other form) while conducting Union business in the capacity of an exclusive representative (on or off premises) is prohibited. Nothing in this section prohibits the Employer from exercising its internal security of the agency.
- B. Access to Employer documents, correspondence and so forth, as related to an individual employee, are for official business use only and will not be distributed, posted, or shared in any way outside the strict scope of the business capacity in which they are used by the exclusive representative.

#### **Section 5. Authority of this Article**

In the event of any inconsistency or conflict between this Article and any other Article contained in this Agreement, the terms, conditions and provisions of this Article shall govern and control.

## Article 32: Alternate Work Schedule and Hours of Work

### Section 1. Alternate Work Schedule

- A. The Alternate Work Schedule (AWS) Program is designed to enable staff to adopt individualized work schedules that both meet employee needs and enable the Employer to carry out its mission effectively.
- B. The Employer is committed to fair and equitable participation in AWS where the establishment of the schedule will not interfere with the ability of the organization to meet its workload and programmatic objectives effectively.
- C. Specific job requirements may not allow for the same degree of personal choice for all employees.
- D. There is no authority to establish hybrid work schedules from the specifically defined traditional and alternative types (see Comptroller General report B-179810, December 4, 1979, and 50 FLRA No. 28, February 23, 1995).

### Section 2. Types of Work Schedules

Bargaining Unit Employees have the option of selecting from a *traditional* or *alternative* work schedule. There are a number of OPM-sanctioned Alternative Work Schedules (AWS) that are either *flexible* or *compressed* by design.

- A. Traditional Work Schedule: The basic workweek normally consists of five (5) eight (8)-hour days, which begin and end at the same time.
- B. Alternative Work Schedules (AWS): Non-traditional schedules that are either Flexible Work Schedules (FWS; established under 5 U.S.C. 6122), and Compressed Work Schedules (CWS; established under 5 U.S.C. 6121).

Employees on an AWS must complete their basic 80-hours of work per pay period by working any hours between 6:00 am and 7:00 pm, local time, consistent with Section 4. Employees are routinely expected to work on weekdays at a maximum of ten (10) hours per day. Occasionally, there may be a circumstance which permits an employee to work longer than a 10-hour day or requires the performance of work on a weekend, but these instances are expected to be infrequent.

AWS Tour Options include:

1. Maxiflex Schedule (AWS/FWS): This schedule allows employees to earn credit hours and vary their daily arrival times within the established flexible bands. A Maxiflex schedule may contain core hours on fewer than 10 work days in the biweekly period. The basic work requirement is eighty hours per biweekly pay period. Employees may vary the number of hours worked on a given workday or the number of hours each week within the limits established for the organization. Employees specify, with supervisory approval, which day(s) they will work and the number of hours per workday.
  - a. Employees on Maxiflex will count all federal holidays as eight (8) hours towards the 80-hour pay period.
  - b. An employee may use leave or compensatory time to meet any additional work hour requirements for the holiday. An employee will also be allowed to earn and use credit hours for this purpose, provided work is available and with supervisory approval.
  - c. Once an employee's Maxiflex schedule is approved by the Employer, it shall become the Employee's approved schedule unless altered by the supervisor or an employee's request to change is approved.
  
2. Flexitour Schedule (AWS/FWS): A type of flexible work schedule in which an employee is allowed to select starting and stopping times within the flexible hours. Once selected, the hours are fixed until the agency provides an opportunity to select different starting and stopping times. For NCEI, this opportunity is available each pay period, effective the following pay period.
  - a. A full-time employee must work 8 hours a day, 40 hours a week, and 80 hours per biweekly pay period.
  - b. An employee may select arrival and departure times subject to agency approval. At the request of an employee, the Agency may approve an adjusted arrival and departure time.
  - c. An employee must account for missed core hours (if permitted) with leave, credit hours, or compensatory time off.

3. Gliding Schedule (AWS/FWS): A type of flexible work schedule in which a full-time employee has a basic work requirement of 8 hours in each day and 40 hours in each week, may select a starting and stopping time each day, and may change starting and stopping times daily within the established flexible hours.
  - a. Gliding schedules provide for flexible time bands at the start and end of the workday. An employee must work during core hours.
  - b. An employee may vary arrival and departure times on a daily basis during the established flexible hours.
4. Variable Day Schedule (AWS/FWS): A type of flexible work schedule containing core hours on each workday in the week and in which a full-time employee has a basic work requirement of 40 hours in each week of the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday within the week within the limits established for the organization.
5. Variable Week Schedule (AWS/FWS): A type of flexible work schedule containing core hours on each workday in the biweekly pay period and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established for the organization.
6. Compressed Work Schedule (AWS/CWS): Fixed schedules that allow employees to complete the basic work requirement in fewer than ten (10) workdays in a pay period. Employees working a compressed schedule are not eligible to earn credit hours.

Under CWS, all employees will have the option of applying for fixed:

- a. 5/4/9 Plan. A compressed schedule in which an employee fulfills the basic work week requirement of eighty (80) hours in a bi-weekly period over a span of nine (9) workdays: workdays: five (5) days one (1) week, four (4) days the other week, with a designated starting time within the time bands. Under this Plan, employees work eight 9-hour days (plus one-half hour official lunch) and one 8-hour day (plus one-half hour official lunch) in a biweekly pay period. The Employee must have a fixed tour of duty within the time bands established in this Article and shall not work under a schedule that results in the payment of night pay.

- b. 4-10 Plan. A compressed schedule in which an employee fulfills the basic work week requirement of eighty (80) hours during the biweekly pay period in four (4) ten (10) hour days (plus one-half hour official lunch). The Employee must have a fixed tour of duty within the time bands established in this Article and shall not work under a schedule that results in the payment of night pay.

With advance supervisory approval, an employee on CWS may switch his/her day off to another day within the same pay period.

Employees on a CWS are entitled to basic pay for the number of hours of the CWS that fall on a holiday.

In accordance with OPM guidelines regarding holidays for employees working CWS, if the Employee's regularly scheduled day off is Friday or Monday and a holiday falls on one of those days, the Employee's day off remains unchanged. Instead, the holiday for the Employee changes as follows:

- a. If the "actual" holiday falls on, Sunday, the "in lieu of" holiday is the following workday (Monday for most employees.) However, if Monday is an employee's day off under CWS, then Tuesday becomes his/her "in lieu of" holiday.
- b. If the actual holiday falls on Monday, the "in lieu of" holiday is the previous workday. Thus, for an employee whose day off under CWS is Monday, the "in lieu of" holiday would be the previous Friday, or Thursday for those employees on 4/10 who take the first Friday and second Monday off.
- c. If the actual holiday falls on a Friday or Saturday, employees whose day off under CWS is Friday would have an "in lieu of" holiday on Thursday.

### **Section 3. Eligibility for AWS**

- A. Employee participation in AWS (either FWS or CWS options) is subject to management approval.

- B. All Bargaining Unit Employees that meet the following requirements are eligible for participation the AWS program:
  - 1. The Employee is not on leave restriction;
  - 2. The Employee is not on an Opportunity to Demonstrate Acceptable Performance Plan;
  - 3. The Employee has not received a disciplinary action that has a nexus to the integrity of the AWS program within the last six months.
- C. Each employee is expected to fulfill the commitment to account for a full 80-hour biweekly period (full-time employees), or a pre-arranged schedule (part-time employees).
- D. AWS allows employees to select their individual arrival and departure times from within the established flexible bands, as outlined in Section 4.

**Section 4. Schedule**

All times listed are local time.

Workdays:	Sunday through Saturday 6:00 am - 10:00 am (arrival band) 2:30 pm - 7:00 pm (departure band)
Lunch Band:	10:00 am - 2:00 pm
Core Hours:	10:00 am - 2:00 pm

**Section 5. Lunch Period**

Employees must take a lunch period and may not “save” any part of the lunch period to leave early or to extend subsequent lunch periods. Employees may extend this period within the lunch time band, provided that they receive prior supervisory approval. The additional time taken for lunch must be worked at the beginning or end of the same work day.

**Section 6. Credit Hours**

- A. An employee must obtain advance supervisory approval to earn credit hours.
- B. The use of credit hours must be approved in advance.

- C. Credit hours may be earned when work is available, or circumstances support continuing work. The earning of credit hours must be voluntary on the Employee's part.
- D. Credit hours may only be used after they are earned and may be earned and used in increments of one-quarter hour.
- E. Credit hours can only be earned within the flexible time bands specified in Section 4 of this Article.
- F. Eligible full-time employees may accumulate more than 24 hours during a pay period but may not carryover more than twenty-four (24) credit hours from one pay period to the next. Thus, for credit hours earned in excess of 24 hours, the Employee will be able to flex their time within the same pay period to allow 'in lieu of' formally earning and using credit hours within the same pay period.
- G. Approval to use earned credit hours will follow the same procedures as approval for annual leave. Credit hours can be used in lieu of or together with approved leave and/or compensatory time to take partial or full days off.
- H. Employees on an AWS are not entitled to Night Differential Pay when they earn credit hours.

### **Section 7. Advance Supervisory Approval**

- A. Employees must receive advance supervisory approval to start working an Alternative Work Schedule or to change from one Alternative Work Schedule to another. Approved requests will be implemented as soon as possible, but not later than the beginning of the first full pay period following approval.
- B. Normally, such requests will be approved or denied within five (5) workdays of receipt.
- C. For changes between types of work schedules, an employee may change their option (e.g., changing from Maxiflex to Compressed schedule, etc.) by notifying their supervisor of the proposed change. Barring workload or other business reasons, the change will be approved, and the change will be effective after one (1) full pay period elapses (e.g., Employee notifies at the end of PP12, change is effective at the beginning of PP14).
- D. In the event of an emergency or workload problem, which interferes with an organization's ability to meet its workload or programmatic objectives or physical office

coverage, the Employer may temporarily change, for a specified period of time, an employee's AWS. The Employer will make every effort to notify the Employee as soon as practicable.

### **Section 8. AWS Termination**

- A. Employees may be terminated from AWS program consistent with paragraph B below for the following reasons:
  - 1. Failure to meet eligibility requirements outlined in Section 3B of this Article.
  - 2. Falsification of time and attendance records (which may be grounds for disciplinary or adverse actions).
  - 3. Employees who are terminated from AWS may reapply for consideration to resume participation in AWS no earlier than three (3) months from the date of termination.
  
- B. An employee who fails to comply with the requirements and provisions of his/her AWS agreement and this Article may be suspended from participation in an AWS in the following manner:
  - 1. If an employee fails to comply with the AWS requirements of this Article, the supervisor shall notify and counsel the Employee on the need to comply with all of the provisions of the program.
  - 2. If the Employee continues not to comply with the AWS program requirements after such written notification, the supervisor may suspend the Employee from participating in the program for up to three (3) months. After the suspension the Employee shall be allowed to resume participation in the program.

### **Section 9. Tour of Duty**

- A. Employees will not be required to sign in or out, to record their arrival or departure time. However, employees may be required to do so if they abuse time and attendance rules and/or the time reporting method established at the local site. If the abuse is a first-time offense, the Employer will allow the Employee to resume normal protocols after thirty (30) calendar days.
  
- B. To the extent possible, the Employer will schedule meetings during core hours, and give employees as much advance notice as feasible.

- C. Employees in travel or training status or on detail will adjust their tour of duty, only as necessary to adhere to the work schedule of the detail organization or to a schedule that will fulfill the purposes of the official travel.
- D. This Article does not prohibit an employee from applying for an uncommon tour of duty for specific personal reasons, consistent with the workday outlined in Section 4 of this Article.
- E. Upon an employee's request, the Employer may, subject to workload requirements, establish a special tour of duty for educational purposes in accordance with applicable laws, rules and regulations.

## Article 33: Overtime, Compensatory Time, and Holidays

### Section 1. Definition

Overtime work consists of hours of work that are officially ordered in advance and in excess of 8 hours in a day or 40 hours in a week, but do not include hours that are worked voluntarily, up to the pay period carryover limit of credit hours.

### Section 2. Compensation

- A. FLSA-exempt and non-exempt employees will be compensated for overtime or holiday work, as appropriate to their status, in accordance with all applicable laws, rules, regulations, and policies at the time the work is performed and with this Agreement to the extent it is not inconsistent therewith.
- B. In order to ensure that employees completely understand their rights for overtime compensation, the Employer will, each time an employee undergoes a personnel action, notify the Employee on the SF 50 as to whether he or she is exempt or non-exempt for the purposes of the Fair Labor Standards Act.

### Section 3. Holiday Work

- A. When the Employer requires the services of employees on an established holiday, the Employer will notify the affected employees with as much notice as possible.
- B. An employee assigned to work on a holiday may be relieved if s/he finds a qualified and willing replacement acceptable to and approved in advance by the supervisor.

### Section 4. Compensatory Time

- A. Employees will earn and use compensatory time in accordance with applicable laws, rules, regulations, and policies.
- B. Employees who have earned approved compensatory time and who do not use it within twenty-six (26) pay periods after the pay period during which it was earned, shall have that time converted at the appropriate pay in accordance with 5 C.F.R. Part 551.531 (g) (*Liquidation of Compensatory Time Off*), except where inconsistent with regulation (i.e., when the compensatory time was earned for travel).

## **Section 5. Compensatory Time for Travel**

- A. For purposes of compensatory time for travel, the official duty station is defined as the forty-five (45) mile radius around the post-of-duty.
- B. Compensatory time for travel will be authorized only for “hours of employment” as defined in 5 U.S.C. 5542 and under standards established by applicable decisions of adjudicatory bodies.
- C. Employees requesting compensatory time off for travel must complete the required form provided by management in advance of the official travel with compensatory time for travel estimates. Any amendments to said request must be completed and submitted within seven (7) days of their return from travel, for supervisory approval.
- D. When compensatory time is earned for travel, consistent with 5 C.F.R. Part 550.1407(a)(1), an employee must use accrued compensatory time off by the end of the 26th pay period after the pay period during which it was credited. If an employee fails to use the compensatory time, he or she must forfeit such compensatory time off.

## **Section 6. Approval or Denial of Compensatory Time**

An employee’s request for compensatory time earned shall be reviewed, and approved or denied by the authorizing supervisor, in the supervisor’s discretion. The authorizing supervisor will notify the Employee as to the approval or denial of the request.

## **Article 34: Official Personnel Folders and Relevant Files**

### **Section 1. Introduction**

The maintenance, content, and release of information from a Bargaining Unit Employee's Official Personnel Folder (OPF), which is coordinated by the current servicing Personnel Office, shall be in accordance with applicable laws, rules, and regulations.

### **Section 2. Access to OPFs**

Password-protected access to OPFs is available electronically to the Employee through the designated website. The electronic files will be maintained in accordance with OPM rules and regulations. Problems with access should be brought to the attention of the servicing Personnel Specialist and the supervisor as soon as possible. Official requests from Union representative or management personnel to review the contents of an employee's OPF will be processed by the servicing Personnel Specialist.

Employees are ultimately responsible for the discovery and reporting of possible inaccuracies in their OPF. Possible discrepancies should be brought to the attention of the servicing Personnel Specialist and their supervisor for investigation and resolution.

### **Section 3. Relevant Files**

Personal notes pertaining to an employee not qualifying as a system of records under the Privacy Act may only be kept and maintained for the use of the supervisor who prepared them. However, the personal notes shall not be used to circumvent proper disclosure to the Employee(s) nor may they be used to retain information that should properly be contained in a system of records or to hinder an employee's promotional opportunities.

### **Section 4. Disclosure**

Any records used in a disciplinary or adverse action must have been disclosed to the Employee on a timely basis except where exempt.

## Article 35: Position Descriptions

### Section 1. Definition

Position Descriptions (PDs) are not assignments of work, but are intended to basically contain the principal duties and responsibilities of the position. It is further understood that, to the greatest extent practicable, the guidelines contained in the OPM job series guides will be used to develop position descriptions. Each employee covered by this agreement shall be provided a PD that accurately reflects the major and grade-controlling duties, responsibilities, and supervisory relationships of the position. This will be provided to the Employee at the time of assignment or upon request. PDs will be consistent for similar duties throughout the Agency. PDs will be current, accurate, and classified to the proper occupational title, series, and grade in accordance with Chapter 51 of Title 5 U.S.C and OPM regulations for each position covered by this Agreement.

It is recognized by the Parties that while many changes in an employee's duties can occur during the lifetime of a position description, the scope of those changes may range from very substantial changes to changes of an inconsequential nature. The Employer agrees to make reasonable efforts to ensure that PDs reflect substantial changes in employee duties.

Any employee may be required to perform "other duties as assigned" which include tasks of an incidental or infrequent nature that are impractical to include in the narrative portion of the Position Description.

Whenever an existing Position Description is amended or new descriptions for employees are developed, NESDIS will provide copies of the amended or new descriptions to the Union and affected employees, normally two (2) weeks in advance of the proposed implementation.

### Section 2. Notification

Employees may request a copy of their current Position Description from their supervisor at any time. If an employee believes that his/her Position Description does not adequately or accurately reflect his/her assigned duties or responsibilities, he/she should, on an informal basis, discuss the matter with the supervisor. Both the Employer and the Employee have a shared responsibility in ensuring that the Employee's Position Description is accurate.

The Employer shall notify the Union and the Employee whenever a PD is changed. The Employer will bargain as appropriate over the changes in accordance with **Article 9** (*Mid-Term Bargaining*).

### **Section 3. Appeal**

The job content, qualifications, and required duties for each job within the bargaining unit are not grievable.

A dispute regarding the accuracy of an employee's Position Description may be informally raised with his/her supervisor. Any employee who feels that his/her position is misclassified may request through his/her supervisor an audit and/or appeal of his/her position duties and responsibilities in accordance with government-wide laws, rules and regulations.

The appeal decision may result in a raising, lowering or substantiating the pay band of the position as the facts warrant. The effective date of any change will be stated in the appeal decision.

## Article 36: Competitive Sourcing and the FAIR Act

### Section 1. Introduction

Office of Management and Budget (OMB) Circular No. A-76, "Performance of Commercial Activities," establishes Federal policy for the performance of recurring commercial activities and implements the statutory requirements of the Federal Activities Inventory Reform (FAIR) Act of 1998, Public Law 105-270. OMB Circular A-76 is designed to balance the interests of the public and private sector, and provide a level playing field for competition, and management and performance of commercial activities.

The Circular is designed to empower Federal managers to make sound and justifiable business decisions. In accordance with the FAIR Act and Circular A-76, each agency must annually submit to OMB a detailed inventory of all commercial and inherently governmental functions performed by Federal employees.

### Section 2. Outsourcing and Insourcing

The Employer reserves its rights under **Article 5** (*Employer Rights*), particularly the right "to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted." The Employer may act on outsourcing and insourcing as follows:

- A. For *encumbered* Federal positions within the Bargaining unit, the Employer agrees to inform the Union regarding proposed action to the study or contracting out of existing functions, whether under OMB Circular A-76 and direct conversion to contractor performance, in accordance with Sections 4 and 5 of this Article.
- B. For *vacant* Federal positions within the Bargaining unit, the Employer has sole discretion to contract out, in accordance with law, rule, and regulation.
- C. For both encumbered and vacant contractor or affiliate (e.g., Cooperative Institute) positions at NCEI, Asheville, NC, the Employer has sole discretion to incorporate or merge the functions into Federal positions in accordance with **Article 14** (*Performance Plans and Appraisals*).

### **Section 3. FAIR Act Inventory**

The Employer will provide the Union the opportunity to review and comment on its annual FAIR Act inventory, including the inventory of inherently governmental functions required by OMB Circular A-76. The Agency will provide to the Union:

- A. The Agency's FAIR Act Inventory in a sortable, digital format (e.g., spreadsheet);
- B. The justifications for all functions listed on the FAIR Act Inventory as "Commercial" or "Inherently Governmental";
- C. A correlation chart showing the geographic location of each employee position as listed on the FAIR Act Inventory.

### **Section 4. Competitive Sourcing and Commercial Activity Process**

The Parties have a mutual interest in ensuring constructive employee involvement in implementing the Commercial Activities (A-76) studies initiated by the Employer as follows:

- A. The Employer agrees to provide the Union with the identification of any commercial activities which have been determined to be studied, any available proposed schedules of key events for such studies, and any other pertinent information within ten (10) business days of the completion or alteration of such a listing. Updates of these schedules will be provided to the Union within twenty (20) business days of their release.
- B. The Employer agrees to work with the Union to facilitate employee input to ascertain if efficiencies can be gained in order to enhance the function. The Employer will give such input full consideration.
- C. The Employer will consult with and consider the views of the Union before studying or contracting for (or considering contracting for) Federal employee work.
- D. The Union may appoint a Bargaining Unit Employee on each PWS and Most Efficient Organization (MEO) Team, consistent with OMB Circular A-76 guidelines. An employee may serve on the PWS Team or the MEO Team, but not both. Members of the PWS and MEO Teams will be provided relevant training. Employee representatives on the PWS and MEO Teams may request a reasonable amount of official time in connection with Team activities.

- E. The organizational entity holding an A-76 competition shall hold regular meetings to discuss the status of the competition with all affected employees, including Bargaining Unit Employees.
- F. The Employer shall provide the Union with a copy of the performance work statement and contract solicitation document when they are released by the contracting officer.

### **Section 5. Competition End**

- A. For any OMB Circular A-76 competition, the Agency will release to the Union the certified Standard or Streamlined Competition Form and the Agency Tender on the date of the tentative performance decision.
- B. The Agency will provide the Union and all affected employees written notification of formal public announcement of the end date of an OMB Circular A-76 competition on the same date as the public announcement is required. The notification will include all information required to be contained in the formal public announcement.
- C. The Agency will conduct the debriefings required by OMB Circular A-76 and the Federal Acquisition Regulation with the Union and all affected employees in a timely manner.
- D. The Agency will provide the Union and all affected employees written notification of the cancellation of an OMB Circular A-76 competition on or before the date of the public announcement of the cancellation. The notification will include all information required to be contained in the formal public announcement by the Circular.
- E. When competitions are cancelled, the Agency will provide the Union all documentation supporting the decision that may be legally released within five (5) work days of the cancellation.
- F. The Agency will inform the Union of all contests and appeals filed by interested parties other than the Union within 24 hours of all such filings.
- G. The Agency will provide the Union with all information concerning competition contests when it becomes available for review or use by the Agency. The Agency will also notify the Union and all affected employees in writing of their right to contest certain decisions involved in the contracting out process.
- H. The Agency will hold the implementation of all public-private competition decisions in abeyance until final decisions have been reached upon timely filed contests.

## Section 6. Direct Conversion

- A. Direct conversions, which are contrary to law, will be a violation of contract.
- B. If the Agency contracts with the private sector to perform federal employee work without holding a competition in compliance with OMB Circular A-76, the Agency will notify the affected employees and the Union sixty (60) calendar days prior to any such contract or task order being signed by the Agency or any such transfer of work. If such a decision will result in adverse employee action or any change in employee working conditions, the Union will be allowed to submit alternatives to such adverse action or change in working conditions, and the Agency may consider these alternatives and provide a written response to the Union regarding these alternatives within ten (10) calendar days.
- C. If the Union believes that bargaining is required, the parties will bargain under the terms of this Agreement at the Union's request.
- D. The Agency may not unlawfully enter into personal service contracts which establish an Employer-Employee relationship for Federal employee work.

## Section 7. Contracting Out Decision

- A. If a change in working conditions arises as a result of a contracting out/privatization action, the Agency will notify the Union and will bargain upon the Union's request in accordance with **Article 9** (*Mid-Term Bargaining*).
- B. The Agency will request Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Program (VSIP) authority from the Office of Personnel Management for all potentially affected employees as soon as possible in the case of contracting out.
- C. Internal reorganizations, transfers of function, realignments, Reductions in Force, Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Program (VSIP), as a result of any contracting out process, will be conducted in accordance with law, rule, regulation and the terms of the Agreement.
- D. If a decision is made to contract out work, or if a decision results in an in-house win but includes a reduction in force, the Agency will comply with all provisions **Article 19** (*Reduction-In-Force (RIF), Transfer of Function, and Reorganization*).
- E. Pursuant to Federal Acquisition Regulation 7.305 the Agency will include the contractor's obligation to grant to eligible employees the right of first refusal in all contracts executed with contractors. Refusing the right of first refusal will not deny a

bargaining unit employee of any rights s/he might otherwise have under this Agreement or applicable Reduction-In-Force procedures, or any other personnel procedures.

- F. When employees are adversely affected by a decision to contract out, the Agency will make maximum effort to find available positions for employees. This effort will include:
1. Accommodating employees in accordance with the Job Swap Article;
  2. Giving priority consideration for available positions within the Agency;
  3. Establishing an employment priority list and a placement program; and
  4. Paying reasonable costs for training and relocation that contribute to placement.

### **Section 8. Employee Privileges and Benefits**

Employees' privileges and benefits will not be diminished by allowing contractors to participate in employee programs. Such privileges include, but are not limited to, health screening, health fitness programs, shuttle services, and Government-sponsored training.

### **Section 9. Availability of Government Property**

- A. If there is adverse impact to bargaining unit employees resulting from making government property available to prospective and selected providers, the Agency will notify and bargain with the Union, in accordance with **Article 9** (*Mid-Term Bargaining*).
- B. Not later than February 1st of each year, the Agency will provide the Union with a list of contractors (and subcontractors) who are occupying space in Agency facilities and the amount of space allocated to each contract (either in square feet or number of contractor personnel).

## **Article 37: Controlled Substance Testing**

### **Section 1. General Provisions of Controlled Substance Testing of Bargaining Unit Employees**

The Parties agree that the methodology for all testing will be in accordance with the procedures of the DOC, Drug-Free Work Place (DFWP) Plan and applicable government-wide laws, rules, and regulations. Should other categories, modifications, or types of testing be required by the U.S. Government, the Parties will meet as expeditiously as possible to develop a mutually agreeable procedure.

To the extent required by Statute and consistent with **Article 9** (*Mid-Term Bargaining*), if the Employer proposes to modify or revise its DFWP, the Employer will provide the Union with adequate prior notice and the opportunity to bargain, as appropriate, over the proposed changes.

## **Article 38: Employee Assistance Program (EAP)**

### **Section 1. EAP Operation**

The Agency agrees that, to the extent possible based on funding and staffing limitations, it will operate an Employee Assistance Program (EAP). EAP ([www.FOH4YOU.com](http://www.FOH4YOU.com)) is administered by the Federal Occupational Health (FOH), a component of the U.S. Public Health Service, Department of Health and Human Services. This program will offer short-term and crisis-oriented counseling for employees experiencing problems in the areas of alcohol abuse, drug abuse, emotional behavioral and/or health problems, and/or certain family situational problems. If this program is to be discontinued due to funding and staffing limitations, the Employer will notify the Union, and negotiations may take place in accordance with **Article 9** (*Mid-Term Bargaining*).

### **Section 2. Notification**

The Employer and the Union will advise employees who appear to be experiencing performance, conduct, and/or attendance problems of the availability of the EAP to provide counseling and referral assistance to resolve any personal problems that may be affecting performance, conduct and/or attendance.

The Employer agrees to inform employees about the services available from the EAP at least annually. The EAP contact point and means of contact will be posted conspicuously in the workplace.

### **Section 3. Charging of EAP Time**

- A. EAP initial consultation(s) will be approved by the Employer on duty time or as an excused absence, provided the Employee informs his/her leave-approving official that the requested time away from the office will be used for EAP consultation. The Employee need not provide further details to the official and may access EAP off duty 24 hours a day.
- B. Employees may request sick leave, annual leave, leave without pay, and/or earned compensatory time, consistent with applicable provisions of this Agreement, for purposes of undergoing a treatment program resulting from a referral by an EAP Counselor. Such leave requests will be approved or denied on the same basis as for any other request which necessitates absence from work.

## Section 4. Confidentiality

- A. Counseling records and information from employee visits to EAP will be kept by the EAP in a confidential manner consistent with applicable laws except where disclosure without consent is allowed (see below), the EAP must obtain the Employee's written consent before any release of information can be made. This applies to all releases, including those to supervisors, treatment facilities and family members, without regard to the type of problem the Employee is experiencing.
  
- B. Disclosure by the EAP without consent is only permissible in a few specific instances, such as to medical personnel in a medical emergency, under certain court orders, and to comply with Executive Order 12564 (Drug Free Federal Workplace). If the Employee's absence from duty is excused when he/she uses the services of the EAP, the EAP can provide information to the Employer as to whether an employee attended a counseling session and the length of the session.
  
- C. In certain situations, information provided to the EAP is not protected by the confidentiality regulations and policies and due to the nature of the information, must be reported to appropriate state and local authorities. Examples include, but may not be limited to:
  - 1. The EAP is required by law to report incidents of suspected child abuse and neglect (and in some states elder and spouse abuse and neglect) to the appropriate state and local authorities.
  
  - 2. If an employee commits or threatens to commit a crime that would physically harm someone or cause substantial property damage, disclosures may be made by the EAP to appropriate persons, such as law enforcement authorities and those persons being threatened.
  
  - 3. If the Employee indicates that he/she is contemplating suicide, disclosures may be made to appropriate medical and/or law enforcement authorities.

## Article 39: Telework

### Section 1. Policy

The Parties agree bargaining unit employees may telework consistent with the agency's telework policy subject to mission requirements and applicable law, government-wide rules and regulations. As of the Effective Date of this Agreement, the Parties will follow the NOAA Telework Implementation Plan, dated October 22, 2018 with the clarifications listed in Section 2.

### Section 2. Clarifications to 2018 NOAA Telework Plan

#### IV. TELEWORK STRATEGIES

**A. Agreeing to Telework.** An employee's decision to telework is voluntary unless telework is a condition of employment (i.e., the Employee is designated an "emergency employee") or is required to continue Government operations in times of emergency (i.e. as a member of the Emergency Relocation Group). In these instances, an employee may be required to work at home, or at other approved alternate worksite(s).

**B. Types of Telework.** It is the policy of the National Oceanic and Atmospheric Administration (NOAA) to allow eligible employees to work at alternate work sites away from their official duty stations, consistent with the needs of their office, during their regular tour of duty. There are two (2) types of telework. Employees can select both routine and/or situational telework:

1. **Routine or Regular/Recurring Telework** occurs as part of a preapproved ongoing, regular schedule. Once the schedule is established, the Employee may not change the assigned telework day(s) without the prior approval of the approving official. An employee's use of telework should have no impact on their use of alternative (flexible or compressed) work schedules. However, employees may work in their official office space on days they would otherwise be teleworking as part of a routine telework schedule, with prior supervisory notification.
2. **Situational:**
  - a. **Unscheduled Telework** occurs under an announcement by the Office of Personnel Management (OPM) or other appropriate authority. When OPM makes an announcement of "Unscheduled Telework" and it is not

the Employee's regularly scheduled telework day, the Employee may choose to perform unscheduled telework. The employee's decision is not subject to prior approval by the supervisor. However, the Employee must notify his/her supervisor in accordance with the applicable policy of the office. In rare circumstances, management may find it necessary to require a non-emergency, telework-ready employee to report for an assignment that requires presence at the worksite (e.g., providing a presentation or performing administrative duties at a pre-scheduled conference). This should not be a last-minute surprise, but a special work circumstance that both the supervisor and employee know about, discuss, and plan in advance as the special work requires. In the rare cases when the Employer requires the Employee to be present at the office on a routine telework day, the Employer will provide notice as soon as practicable, preferably before the end of the preceding business day.

- b. **Ad Hoc Telework** performed on an ad hoc, episodic, occasional, one-time, or irregular basis. Ad hoc telework must be requested and approved by the supervisor in advance. An employee, if unable to readily reach their supervisor or designee, may begin ad hoc telework after notifying them in writing.

**D. Teleworkers and Non-Teleworkers Shall be Treated the Same for Certain Purposes:**

1. Periodic appraisals of job performance of employees;
2. Training, rewarding, reassigning, promoting, reduction in grade, retaining, and removing employees;
3. Work requirements and/or developmental assignments;
4. Other acts involving managerial discretion.

**F. Maximum Amount of Teleworking.** The maximum number of days an employee (including part-time employees) may telework during a pay period is left to the discretion of the approving official or designee (i.e., employee's supervisor). This includes regular/recurring telework and situational telework. Days tele worked per week will be objectively determined by the approving official or designee, with input from the requesting employee, on a case-by-case basis.

**XVI. REPORTING REQUIREMENTS**

8. Management will provide the Union with annual statistics in the first quarter of each Fiscal Year on telework participation by Bargaining Unit members, including counts of employees routinely teleworking 1 or more days per week.

### **Section 3. Updates to NOAA Telework Implementation Plan**

The Parties agree to engage in bargaining consistent with **Article 9** (*Mid-Term Bargaining*) should there be any changes to the NOAA Telework Implementation Plan.

## **Article 40: Voluntary Allotment of Union Dues**

### **Section 1. General**

Bargaining Unit Employees (BUE) who occupy positions represented by the Union may have their dues withheld through payroll deduction. Dues withholding is to be voluntary on the part of the individual employee. The Union is responsible for informing the BUE of the voluntary nature of dues withholding and the conditions governing a BUE revocation of dues withholding. The Union will pay no fee for the services set out in this Article. The Employer is responsible for all costs associated with this payroll deduction allotment or revocation of dues processing. In implementing the dues deduction program, the Employer and the Union will be governed by the provisions of 5 U.S.C. 7115 and this Article.

### **Section 2. Forms**

The Union will be responsible for the distribution of Standard Form 1187 for the use by an eligible member of the Union who wishes to authorize the deduction of his/her dues. Standard Form 1188 will also be available through the Union for employees who wish to revoke the allotment as described in Section 8.

### **Section 3. Dues Withholding**

Standard Form 1187 may be completed at any time by a BUE, to be certified only by the Union President or designee and forwarded to the Employer's payroll office for processing. Dues will be withheld beginning with the first complete pay period following receipt of Standard Form 1187 at the Employer's payroll office.

### **Section 4. Dues Schedule**

An Employee's dues schedule may be changed pursuant to Section 7 below. The Department will apply the appropriate dues schedule to Union members who authorize deduction of dues. Changes to the amount of Union dues cannot occur until 12 months have passed since the latest change. When the amount of regular dues changes, the Union President or designee will notify the Employer's payroll office of that change in writing. This change should take effect within two pay periods of notification to payroll.

## **Section 5. Union Members Not in Good Standing**

If the Union suspends or expels a Union member, it will notify the Employer's payroll office by e-mail of that determination. The Employer's payroll office will subsequently cease dues deduction for that employee and copy the Union President.

## **Section 6. Dues Withholding Fees and Accounts**

The Employer will remit by Electronic Funds Transfer the net amount of dues withheld. The Employer will also send to the Union a listing of names and amounts withheld.

## **Section 7. Automatic Termination of Dues Withholding**

All allotments of Union dues withholding will be automatically terminated in the event of loss of exclusive recognition. Any individual allotment for dues withholding shall automatically terminate upon the separation of the Employee from the Department or transfer of the Employee from the bargaining unit.

## **Section 8. Correction of Errors**

Administrative errors in remittance amounts will be corrected and adjusted in the next remittance to be issued to the Union. The Employer agrees that the total error in the amount of dues withheld from BUE shall be adjusted as soon as practicable after the Employer has discovered the error or has received written notification from the Union of the error.

If a BUE has been improperly separated and is ordered reinstated by the appropriate authority to a BUE position, the Employee is required to initiate a new SF-1187 to restart dues withholding if they voluntarily elect to do so.

## **Section 9. Revocation**

A Union member may revoke his/her allotment for Union dues by submitting to the Union President a completed and signed Standard Form 1188 within ten (10) calendar days of their anniversary date maintained by the Union. The Union is responsible for submitting the SF-1188 to Payroll. If an SF-1188 (*Revocation Notice*) is received by the Management Representative, s/he will forward promptly to the Union President.

## **Article 41: Workers' Compensation**

### **Section 1. Counseling**

The Employer agrees that when an employee suffers or alleges illness or injury in the performance of duties, the supervisor will advise the Employee as soon as possible of the appropriate Workforce Management Office to contact, which will inform the affected employee of his/her rights under the Federal Employees Compensation Act. These rights include the following:

- A. The employee's right to file for compensation benefits;
- B. The types of benefits available;
- C. The procedure for filing claims; and
- D. The option to use compensation benefits, if approved, in lieu of sick or annual leave.

### **Section 2. Guidelines**

- A. As soon as possible after experiencing a job-related injury or illness, the Employee must report the injury to his/her supervisor and contact the appropriate medical office.
- B. The Employee will then file the appropriate documentation.

## **Article 42: Parking**

### **Section 1. Allocation of On-Campus Spaces**

The Employer will ensure fair access to parking spaces on the Veach-Baley campus assigned to NCEI by GSA, excluding space(s) needed for government vehicles and reserved spaces. Parking space allocation is based upon the square footage occupied by NCEI per GSA.

### **Section 2. Cost**

All expenses related to parking per GSA regulation will be borne by the Employee. If an employee fails twice to make their regular monthly payments as scheduled, s/he will forfeit his/her right to a space in the Veach-Baley Federal Building parking lot.

### **Section 3. Advocacy**

The Employer will collaborate with the Union to advocate for broader parking opportunities on the Veach-Baley campus and its surroundings as appropriate.

**Appendix A: AFGE Local 446 Representation Form**

AMERICAN FEDERATION of GOVERNMENT EMPLOYEES

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Affiliated with AFL-CIO

PO Box 19527  
Asheville, NC 28815

PHONE: 828-299-5910  
FAX: 828-298-2334

***AFGE Local 446 Representation Form***

Date: \_\_\_\_\_

TO WHOM IT MAY CONCERN:

I, \_\_\_\_\_, hereby appoint the President of  
AFGE Local 446, or whomever he/she may designate, to represent me  
regarding the matter of:

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The AFGE Local 446 Union office shall request any information deemed necessary in order to  
represent me in this matter.

**EMPLOYEE SIGNATURE:** \_\_\_\_\_

**Appendix B: Formal Grievance Form**

**AMERICAN FEDERATION of GOVERNMENT EMPLOYEES**

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Affiliated with AFL-CIO

PO Box 19527  
Asheville, NC 28815

PHONE: 828-299-5910  
FAX: 828-298-2334

***AFGE Local 446 Formal Grievance Form***

Date: \_\_\_\_\_

Grievant(s) Name: \_\_\_\_\_ Representative Name [if any]: \_\_\_\_\_

Second-Line Supervisor: \_\_\_\_\_  
\_\_\_\_\_

Date of the Issue or When Aware of Issue: \_\_\_\_\_

Specific Article, Section, Law, Rule, or Policy Allegedly Violated:  
\_\_\_\_\_  
\_\_\_\_\_

Specific Statement of the Grievance:

Desired Remedy:

Meeting Requested to Discuss the Grievance: YES \_\_\_ or NO \_\_\_

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Signature of Grievant(s) [only if filing independently]\*

\*Otherwise, submit AFGE Local 446 Representation Form with Employee signature

## Appendix C: Acronyms

ADR	Alternative Dispute Resolution
AFGE	American Federation of Government Employees
ATO	Agency Tender Official
AWOL	Absent Without Leave
AWOP	Absent Without Pay
AWS	Alternate Work Schedule
BUE	Bargaining Unit Employees
CBA	Collective Bargaining Agreement
CFR	Code of Federal Regulations
CSO	Competitive Sourcing Official
CTAP	Career Transition Assistance Program
DAO	Department Administrative Order
DFWP	Drug-Free Work Place
DOC	Department of Commerce
EAP	Employee Assistance Program
EEO	Equal Employment Opportunity
EEOC	EEO Commission
FAIR Act	Federal Activities Inventory Reform Act (of 1998)
FAR	Federal Acquisition Regulation
FLRA	Federal Labor Relations Authority
FMCS	Federal Mediation and Conciliation Service
FMLA	Family and Medical Leave Act (of 1993)
FSIP	Federal Service Impasses Panel
FTE	Full Time Equivalent
GFP	Government Furnished Property
GSA	General Services Administration
HRS	Human Resources Center
ICTAP	Interagency Career Transition Assistance Program
IDP	Individual Development Plan
IT	Information Technology
LAO	Leave Approving Officials
LCA	Last Chance Agreement
LWOP	Leave Without Pay
MAP	Merit Assignment Program
MEO	Most Efficient Organization
MES	Management Efficiency Study
MOAO	Management Operations and Analysis Office
MR	Management Representative

MRO	Medical Review Officer
MSPB	Merit Systems Protection Board
NCEI	National Centers for Environmental Information
NESDIS	National Environmental Satellite, Data and Information Service
NOAA	National Oceanic and Atmospheric Administration
ODAP	Opportunity to Demonstrate Acceptable Performance
OMB	Office of Management and Budget
OPF	Official Personnel Folder
OPM	Office of Personnel Management
OWCP	Office of Workers' Compensation Program
PD	Position Description
PHRM	Principal Human Resources Managers
PIP	Performance Improvement Plan
PWS	Performance Work Statement
RIF	Reduction-In-Force
SCD	Service Computation Date
SF	Standard Form
SLUC	Standard Level Use Charge
TDD	Telecommunications Devices for the Deaf
TE	Technical Expert
USC	United States Code
USERRA	Uniformed Services Employment and Reemployment Rights Act
WFMO	Workforce Management Office