

COLLECTIVE BARGAINING AGREEMENT  
BETWEEN  
URBAN MASS TRANSPORTATION ADMINISTRATION  
AND  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES  
LOCAL 3313, AFL-CIO  
JULY 7, 1983

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## PREAMBLE

In accordance with the provisions of the Civil Service Reform Act, Public Law 95-454 (October 13, 1978), the following agreement is entered into between the Urban Mass Transportation Administration, Department of Transportation, Washington, D.C., hereinafter referred to as the Employer, and Local 3313, American Federation of Government Employees, AFL-CIO, hereinafter referred to as the Union. Collectively, they are referred to in this agreement as the Parties. This agreement applies to the two units defined in Article 1 below for which the Union is recognized as the exclusive bargaining agent.

## ARTICLE 1

### RECOGNITION

The Employer recognizes the Union as the exclusive representative for a unit of non-professional employees and a separate unit of professional employees. They are defined, respectively as follows:

- A. All non-supervisory, non-professional General Schedule and Wage Grade employees of the Urban Mass Transportation Administration Headquarters, Washington, D.C.; and
- B. All professional non-supervisory General Schedule employees of the Urban Mass Transportation Administration Headquarters, Washington, D.C.
- C. Excluded from both units are supervisors, guards, management officials, and employees engaged in personnel work other than in a purely clerical capacity.

## ARTICLE 2

### MANAGEMENT AUTHORITIES

Nothing in this agreement shall affect the authority of any management official:

- A. To determine the mission, budget, organization, number of employees, and internal security practices of the agency.
- B. To hire, assign, direct, layoff, and retain employees in the agency, or take corrective action against such employees.
- C. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which the agency operations shall be conducted.
- D. With respect to filling positions, to make selections for appointments from:
  - (1) Among properly ranked and certified candidates for promotion; or
  - (2) Any other appropriate source; and
- E. To take whatever actions may be necessary to carry out the agency mission during emergencies.

### ARTICLE 3

#### PROTECTION AGAINST PROHIBITED PERSONNEL PRACTICES

The Employer will actively and affirmatively uphold its responsibilities under 5 U.S.C. 2302, Prohibited Personnel Practices. The Union will not encourage any action on the part of the Employer that would be inconsistent with the letter or the spirit of 5 U.S.C. 2302.

Should the statutory protection against prohibited personnel practices be repealed, Article 14, Past Practices, comes into force.

### ARTICLE 4

#### IDENTIFYING SUPERVISORS

The Employer agrees to identify, on request, an employee's official supervisor by position title and organization location.

## ARTICLE 5

INSPECTOR GENERAL HOTLINE

Section 1. The Employer agrees that the Secretary's memorandum to all employees of April 7, 1979, has no modifying effect on any collective bargaining agreement currently in effect in the Agency.

Section 2. The Employer will take no disciplinary or adverse action against any employee citing the Secretary's memorandum to all employees of April 7, 1979.

## ARTICLE 6

QUALITY OF WORK LIFE

Section 1. A high quality of work life is essential to the job satisfaction of employees and the productivity of the Employer. Therefore, the parties agree to work cooperatively for the continuing enhancement of the quality of work life in UMTA.

## ARTICLE 7

BUDGET PROCEDURES

When UMTA's budget is formally transmitted to the Congress and again when OMB has apportioned a congressionally enacted budget, the Union will be given a copy of the budget and a briefing will be given to all UMTA Headquarters employees.

## ARTICLE 8

UNION REPRESENTATION RIGHTS AND DUTIESSection 1.

- A. The Union is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all

employees in the unit. As exclusive representative, the Union is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

- B. The Union, as exclusive representative, shall be given the opportunity to be represented at:
1. Any formal discussion between one or more representatives concerning any grievance of any personnel policy or practices or other general condition of employment; or
  2. Any examination of an employee in the unit by a representative of the Employer in connection with an investigation if:
    - (a) The employee reasonably believes that the examination may result in disciplinary action against the employee; and
    - (b) The employee requests representation.
- C. The Employer shall annually inform its employees of their rights under paragraph B.(2.) of this Section.
- D. The Employer and the Union, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the Employer and the Union, as exclusive representative, may determine appropriate techniques, consistent with the provisions of Section 7119 of Title 5 U.S.C., to assist in any negotiation.
- F. The rights of the Union as exclusive representative under the provisions of this Section shall not be construed to preclude an employee from:
1. Being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or
  2. Exercising grievance or appellate rights established by law, rule, or regulation;

except in the case of grievance or appeal procedures negotiated under Chapter 71, Title 5 U.S.C.

Section 2. The duty of the Employer and the Union, as exclusive representative, to negotiate in good faith under section 1 of this Article shall include the obligation:

- A. To approach the negotiations with a sincere resolve to reach a collective bargaining agreement;
- B. To be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;
- C. To meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;
- D. In the case of the Employer, to furnish to the Union, as exclusive representative, or its authorized representative, upon request and, to the extent not prohibited by law, data:
  - 1. Which is normally maintained by the Employer in the regular course of business;
  - 2. Which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and
  - 3. Which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and
- E. If agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and take such steps as are necessary to implement such agreement.

Section 3.

- A. An agreement between the Employer and the Union, as exclusive representative, shall be subject to approval by the Administrator of the Urban Mass Transportation Administration.
- B. The Administrator of the Urban Mass Transportation Administration shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of Chapter 71, Title 5 U.S.C., and any other applicable law, rule, or regulation (unless the Employer has granted an exception to the provision).

- C. If the Administrator of the Urban Mass Transportation Administration does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the Employer and the Union, as exclusive representative, subject to the provisions of Chapter 71, Title 5 U.S.C., and any other applicable law, rule, or regulation.
- D. At such time that this agreement becomes subject to a national or other controlling agreement at a higher level, this agreement shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the Employer.

## ARTICLE 9

### UNION OFFICERS AND STEWARDS

Section 1. The Employer will recognize all officers and four stewards to represent UMTA unit employees, who will be members of the bargaining unit.

Section 2. The Union will notify the Employer in writing of the names of all officers and the stewards. No changes of stewards will be recognized by the employer until a written notice is received from the AFGE Local 3313 President.

Section 3. Properly designated officers and stewards will be granted a reasonable amount of official time by their immediate supervisors to perform their representational duties. The steward will first advise the immediate supervisor. The steward will estimate the duration of the interruption for the immediate supervisor. The immediate supervisor shall grant permission unless some operational requirement makes temporary postponement necessary, in which case there shall be an agreement on another time which will be mutually satisfactory. Upon completion of his/her representational duties, the steward will advise the supervisor that he/she is no longer on official time.

Section 4. When a steward must converse with another UMTA employee concerning representational matters, the steward will first advise the other employee's immediate supervisor. The immediate supervisor shall grant permission unless some operational requirement makes temporary postponement necessary, in which case there shall be an agreement on another time which will be mutually satisfactory.

Section 5. Whenever an employee or a group of employees designates, in writing, a representative, the Employer shall deal with that representative until that matter is resolved or until the employee/employees withdraw the designation, in writing.

Section 6. When a union official or steward is detailed or temporarily promoted to a supervisory position, if that assignment exceeds two weeks, that union official or steward must relinquish all union responsibilities for the duration of the assignment.

## ARTICLE 10

### FACILITIES AND SERVICES

#### Section 1.

- A. Upon reasonable request, the Employer will schedule a conference room (if available) in the Nassif Building for Union-sponsored meetings. Employees will attend such meetings only during nonduty hours or on approved leave.
- B. The Union agrees to abide by the Employer's housekeeping and security regulations.

Section 2. When to do so will not disrupt the Employer's work operations, the Employer will provide confidential space for meetings between bargaining unit members and Union officers or stewards for the purpose of discussing grievances, potential grievances, or other matters relating to the administration of this agreement. Such meeting will not be used to discuss internal Union business.

#### Section 3.

- A. The Employer shall provide for the exclusive use of the Union one locked bulletin board (at a minimum of 9 sq. ft.) on each floor of the Nassif Building where 50 or more unit employees work. Each bulletin board shall be permanently attached to the wall in a clearly visible location as convenient to the largest concentration of unit members as possible.
- B. The Union shall not display on any of these bulletin boards any material that is defamatory of individuals, or of a partisan political nature.

Section 4. The Employer will furnish to the Union, for its internal use only, a list containing the name, grade, position title, and organizational location of each employee in the bargaining unit. This list will be provided within 90 days after this Agreement becomes effective and quarterly thereafter.

Section 5.

- A. The Employer will have this agreement legibly printed in a convenient size and format and distributed as follows:
1. One copy to each present member of the bargaining unit (within 60 days of the effective date of this agreement);
  2. One copy each to future members of the bargaining unit (when they enter the unit); and
  3. Twenty-five copies to the Union (within 60 days of the effective date of this agreement).
- B. At the time the agreement is distributed to bargaining unit members, the Employer will also distribute a listing of the Union's UMTA officers and stewards showing name, union office, and office telephone number. This list will also be given to new bargaining unit members when they enter the unit.

Section 6. The Employer's telephones will not be used to conduct internal Union business, but may be used to discuss grievances, potential grievances, and other matters of contract administration.

## ARTICLE 11

### VOLUNTARY ALLOTMENT OF UNION DUES

Section 1. The Employer agrees to permit employees who are members of the unit to pay dues to the Union through authorization of voluntary allotments from their compensation, provided that the employee who so requests:

- A. Is a member in good standing in the Union;
- B. Completes Standard Form 1187, Request for Authorization for Voluntary Allotment of Compensation for Payment of Employee Union Dues; and
- C. Receives compensation sufficient to cover the total dues.

Section 2. The Union agrees to assume the responsibilities for:

- A. Providing and furnishing upon request Standard Form 1187 or;
- B. Notifying the UMTA Office of Personnel in writing of:
  - 1. The names and titles of officials authorized to make the necessary certification of Standard Form 1187 in accordance with the Article.
  - 2. The name, title, and the address of the allottee to whom remittances should be sent, including how the check should be made out.
  - 3. Any change in the amount of membership dues (see Section 4.a.).
  - 4. The name of any employee who has been expelled or ceases to be a member in good standing in the Union within 10 days of the date of such final determination.
- C. Forwarding properly executed and certified Standard Form 1187 to the Office of Personnel on a timely basis.

Section 3. The Employer agrees to assume the responsibilities for:

- A. Permitting and processing voluntary allotment of dues in accordance with this Article.
- B. Withholding dues on a biweekly basis.
- C. Notifying the employee and the Union when an employee is not eligible for an allotment because he/she is not included in the unit to which this agreement is applicable.
- D. Withholding new amounts of dues upon certification from the authorized Union official so long as the amount has not been changed during the past 12 months.
- E. Transmitting remittance checks to the allottee designated by the Union, together with a listing of employees for whom deductions were made and a copy of all revocation notices received in the payroll office.

- F. Providing the following information on the remittance listing:
1. The name of each employee from whom deduction is being made, or has authorized deductions to be made, during the current pay period, plus the name of each employee for whom authorizations were applicable in the previous pay period but for whom amounts are not being deducted in the current pay period.
  2. For each employee or group of employees the following information will be given to the extent applicable:
    - a. Identification of the employee by chapter, local, lodge, or other equivalent component of the Union;
    - b. Amount withheld;
    - c. New allotments;
    - d. No deduction because employee's compensation insufficient to permit a deduction; and
    - e. No deduction because employee has been separated, transferred, or reassigned outside the recognition area covered by the agreement to withhold dues.
    - f. The amount deducted. Furnish the Union with a receipt for Forms 1187 delivered to Labor Management Representatives.

Section 4. The parties agree that:

- A. The amount of the dues to be deducted as allotments from compensation may not be changed more frequently than once each 12 months.
- B. Administrative errors in remittance checks will be corrected and adjusted in the next remittance check to be issued to the Union. If the Union is not scheduled to receive a remittance check after discovery of the error, the Union agrees to promptly refund the amount of erroneous remittance.

- C. An employee who has authorized the withholding of Union dues may request revocation of such authorization by memorandum and/or completion and submission of Standard Form 1188 to the Agency.

Section 5. The effective date for actions under this Article are as follows:

<u>ACTION</u>	<u>EFFECTIVE DATE</u>
A. Starting dues withholding.	The beginning of the first pay period after the date of receipt of the properly executed and certified Standard Form 1187 in the Office of Personnel.
B. Change in amounts of dues	Beginning of the first pay period after receipt of an appropriate certification in the Office of Personnel.
C. Revocation by employee.	The beginning of the first full pay period upon receipt of the revocation notice (i.e. SP 1188 or memorandum). The agency, provided that no such allotment may be revoked for one year.
D. Termination due to loss of membership in good standing.	Beginning of the first pay period after date of receipt of an appropriate notification in the Office of Personnel.
E. Termination due to loss of recognition on which allotment was based.	Beginning of the first pay period following loss of recognition.
F. Termination due to separation or movement to recognition area not covered by the agreement.	If action is effective on the first day of the pay period, termination of allotments will be at the end of the preceding pay period. If the action is effective on any day other than the first day of a pay period termination of allotment will be at the end of the pay period.

## ARTICLE 12

UNFAIR LABOR PRACTICE

Section 1: For the purpose of this agreement, it shall be an unfair labor practice for the Employer:

- A. To interfere with, restrain, or coerce any employee in the exercise by the employee of any right under Chapter 71, Title 5 U.S.C.;
- B. To encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
- C. To sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;
- D. To discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under Chapter 71, Title 5 U.S.C.;
- E. To refuse to consult or negotiate in good faith with the union as required by Chapter 71, Title 5 U.S.C.;
- F. To fail or refuse to cooperate in impasse procedures and impasse decisions as required by Chapter 71, Title 5 U.S.C.;
- G. To enforce any rule or regulation (other than a rule or regulation implementing Section 2302 of Title 5 U.S.C.) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or
- H. To otherwise fail or refuse to comply with any provision of Chapter 71, Title 5 U.S.C.

Section 2: For the purpose of this Agreement, it shall be an unfair labor practice for the Union:

- A. To interfere with, restrain, or coerce any employee in the exercise by the employee or any right under Chapter 71, Title 5 U.S.C.;
- B. To cause or attempt to cause the Agency to discriminate against any employee in the exercise by the employee of any right under this Article;
- C. To coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;
- D. To discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or non-preferential civil service status, political affiliation, marital status, or handicapping condition;
- E. To refuse to consult or negotiate in good faith with the Employer as required by this Article;
- F. To fail or refuse to cooperate in impasse procedures and impasse decisions as required by Chapter 71, Title 5 U.S.C.;
- G. (1) To call, or participate in, a strike, work stoppage, or slowdown, or picketing of the Employer in a labor-management dispute if such picketing interferes with the Agency's operations; or  
  
(2) To condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or
- H. To otherwise fail or refuse to comply with any provision of Chapter 71, Title 5 U.S.C.

Nothing in paragraph (1) of subsection G. shall result in any informational picketing which does not interfere with the Employer's operations being considered as an unfair labor practice.

Section 3. For the purpose of this Agreement it shall be an unfair labor practice for the union, as exclusive representative, to deny membership to any employee in the appropriate unit represented by the union except for failure:

- A. To meet reasonable occupational standards uniformly required for admission;  
or
- B. To tender dues uniformly required as a condition of acquiring and retaining membership.

This section does not preclude the union from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with provisions of Chapter 71, Title 5 U.S.C.

Section 4. Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 7121 (e) and (f) of Title 5 USC, an employee has an option of using the negotiated grievance procedure or, an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this Section, but not under both procedures.

Section 5. The expression of any personal view, argument, opinion or the making of any statement which:

- A. Publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election;
- B. Corrects the record with respect to any false or misleading statement made by any person; or
- C. Informs employees of the Government's policy relating to labor-management relations and representation, shall not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions: (1) constitute an unfair labor practice under any provision of Chapter 71, Title 5 U.S.C.; or (2) constitute grounds for the setting aside of any election conducted under any provisions of Chapter 71, Title 5 U.S.C.

## ARTICLE 13

MID-TERM BARGAINING

Section 1. Upon request by the Union, the parties shall meet and negotiate in good faith upon changes in conditions of employment proposed by management.

Section 2. By mutual agreement, the parties may meet and negotiate in good faith upon changes in conditions of employment which are permitted or proposed by higher authority or statute.

Section 3. If either party requests negotiations, the requesting party shall submit proposals to the other party with such request.

Section 4. Management shall not implement new or modified policies or procedures covering conditions of employment or personnel policies until 30 days after the Union has been notified, unless management has a bona fide need to act before the 30 days. Impact bargaining may continue after implementation.

Section 5. Nothing in this article shall preclude either party from submitting other proposals or counter proposals on the same subject during the course of negotiations.

## ARTICLE 14

PAST PRACTICE

The Employer shall inform the Union of its intent to change any past practice with respect to Union or employee rights and civil liberties, benefits or services, or other matters appropriate for collective bargaining.

## ARTICLE 15

EFFECT OF LAW AND REGULATION

Any interpretation of this contract shall be governed by the provisions of Article 48, Section 13, Arbitration, of this agreement, regardless of whether the matter is taken to arbitration.

## ARTICLE 16

SPECIAL PROVISION FOR CERTAIN LAWS AND REGULATIONS

Notwithstanding any other provision of this Agreement, at such time as new laws and/or Government-wide regulations are issued on the subject(s) of Reduction-in-Force, Performance Appraisal, Incentive Awards and/or Performance-Based Pay Systems, any provisions of this Agreement in conflict with such regulations shall be without effect, and the parties shall immediately negotiate new provisions that are consistent with the new laws and/or regulations.

## ARTICLE 17

ORIENTATION OF NEW EMPLOYEES

The Employer shall notify the Union, at least one week in advance, of scheduled orientation sessions involving new employees assigned to jobs in the Unit. A Union representative will be provided an opportunity at scheduled orientation sessions to explain the Union's representation responsibility to Unit employees, and to distribute a list of the names of Union officers and stewards, their telephone numbers and work locations. This session will not be used for the solicitation of membership or other internal Union business.

## ARTICLE 18

EQUAL EMPLOYMENT OPPORTUNITYSection 1.

- A. The Employer shall provide equal opportunity employment for all employees and will prohibit discrimination in employment because of race, color, religion, sex, national origin, political affiliation, marital status, age or handicapping condition.
- B. The Employer shall continue to carry out its Affirmative Action Program, including the special emphasis programs, to promote equal opportunity in every aspect of agency personnel

policy and practice in the employment, development, advancement, and treatment of employees.

- C. The Employer shall make every effort to assure that there is no discrimination in any work related activities under the control of the Employer.

Section 2. The Union agrees that in carrying out its representational activities, the Union will not engage in any discrimination against any employee because of race, color, religion, sex, national origin, political affiliation, marital status, age or handicapping condition.

Section 3.

- A. The Employer shall periodically appraise its equal opportunity programs to review accomplishments toward established objectives. Upon request, the Union will be provided copies of any reports furnished to the responsible regulatory authorities and other reports that can appropriately be made available in accordance with applicable law and regulation.
- B. The Employer shall make available to employees a copy of the regulations it issues to carry out its programs of equal employment opportunity. The Employer shall assure that the affirmative action policy is publicized by the posting of appropriate notices.

Section 4. Equal Employment Opportunity Counselors, the UMTA Federal Women's Program Manager, the UMTA Hispanic Employment Manager, and other special emphasis program coordinators shall be available to all employees in the bargaining unit.

Section 5.

- A. The Employer will continue its efforts to provide effective EEO Counselors, which may include the providing of any necessary training.
- B. In making designations of EEO Counselors, the Employer agrees to solicit nominations from the Union when a vacancy for an EEO Counselor occurs and to consider those nominees, together with others, in designating the replacement counselors.
- C. Union Stewards and union officials shall not serve as Equal Employment Opportunity Counselors.

## ARTICLE 19

POSITION DESCRIPTIONS

Section 1. Employees will be provided with a copy of their position descriptions upon entering the position, whenever changes are made, and upon appropriate request.

Section 2. Position descriptions must state the principal duties, responsibilities and supervisory relationships of a position in a manner necessary for proper classification. However, position descriptions are not expected to contain a comprehensive or exhaustive listing of every task and duty which is performed by an employee. Minor duties may be omitted from the position description or covered by a brief statement that minor duties may be performed.

Section 3. “Other duties as assigned” and similar phrases in position descriptions shall not be construed to cover work unrelated to the mission of the agency. Employees may not refuse to carry out assignments related to the mission of the agency on the grounds that the assignments are not covered by their position descriptions.

Section 4. An employee may initiate a request for a position review by bringing to the attention of his or her supervisor, in writing, significant aspects of his/her duty assignments which he or she believes are not covered by the official position description. An employee may meet with appropriate management officials to discuss any position description problems. If the supervisor agrees that material differences exist, he/she will either propose a new position description or amendment or take action to make the employee’s duties consistent with the current position description.

Section 5. An employee can appeal the classification of his/her position or grieve the content of his/her position description at any time. An employee who has filed a classification appeal shall not be subject to any penalty reprisal, discrimination, or harassment because he/she has filed such an appeal.

## ARTICLE 20

MERIT PROMOTION

Section 1. This Article shall apply to all promotions to positions within the bargaining unit except in the following cases:

- (A) Career ladder promotions;
- (B) Promotions provided for in an Upward Mobility or other formal career development program;
- (C) Promotions resulting from reclassification, either without a change in duties or as a result of the addition of duties to an existing position;
- (D) Remedial promotions, e.g., to implement the decision of an arbitrator or appellate authority;
- (E) Promotions of persons downgraded without personal cause, e.g., in a reduction-in-force;
- (F) Promotions following conversion of a cooperative education student, a Veterans Readjustment Act appointee, or a participant in a comparable program;
- (G) Temporary promotions of 120 days or less.

Section 2. Nothing in this Article shall preclude the agency from filling positions by other appropriate means, e.g., lateral reassignment, reinstatement, transfer-in, conversion of a temporary employee etc., without regard to this Article, or from deciding at any time not to fill a position.

Section 3. Actions taken under this Article shall be solely on the basis of merit, without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, gender, national origin, non-disqualifying physical handicap, or age; and shall not be based on any criteria that are not job-related, including favoritism based on personal relationship or patronage.

Section 4. Before a promotion is made under this Article, all bargaining unit employees who are qualified and eligible will be afforded an opportunity for consideration by either skills search or advertisement.

Section 5. If a skills search is used to identify promotion candidates, the personnel records of all employees below the grade level of the position to be filled will be reviewed, and all who are qualified and eligible will be considered.

Section 6. If advertisement is used to identify promotion candidates, lists of vacancy announcements will be posted on official bulletin boards within the area of consideration along with a statement that copies of the complete announcement are available in the Office of Personnel:

(A) Vacancy announcements will be open for at least 10 work days.

(B) The Union will be provided a copy of each vacancy announcement at the time it is posted.

Section 7. Employees who apply for vacancy announcements and are not selected will be notified of the reason for non-selection, i.e., were not qualified, were not eligible, were not among the best qualified candidates, or were not selected from among the best qualified. If a skills search is used, all employees who meet minimum qualifications requirements and are not selected will be notified of the reason for non-selection, i.e., not eligible, not among the best qualified, or not selected from among the best qualified.

Section 8. If more than 10 qualified and eligible candidates from within the bargaining unit are identified by either a skills search or advertisement, the Agency will appoint an Evaluation Board of three members to evaluate the potential of the qualified and eligible candidates to perform in the vacant position. The selecting official will not serve on the Evaluation Board. The Board will consider each candidate's performance evaluation, past experience, educational background, incentive awards and other relevant information which indicates potential or lack of potential to perform in the vacant position. The assessment of each candidate will be based solely on the documentation before the Board and not on the personal opinions of the Board members.

Section 9. The specific factors considered by the Board and their relative weights will be made part of the merit promotion record. This record, sanitized to prevent clearly unwarranted invasions of privacy, will be made available on request to an unsuccessful candidate or his/her representative in the event of a grievance. Nothing in this Section shall interfere with the Union's statutory right to information.

Section 10. The selecting official will consider all pertinent data which he/she is provided on each candidate certified. A selection technique utilized in regard to one candidate, e.g., an interview, will be utilized for all.

Section 11. An employee, upon request, will be entitled to Counseling by appropriate agency officials regarding the areas, if any, in which he/she could or should improve in order to increase chances for future promotion.

Section 12. Non-selection for promotion shall not be grievable unless it is claimed that one or more sections of this Agreement have been violated. The bare claim, however documented, that the would be grievant was, in fact, the best qualified candidate will not suffice to meet this test.

## ARTICLE 21

### DETAILS AND TEMPORARY PROMOTIONS

Section 1. Details are intended only for meeting temporary needs when necessary services cannot be obtained by other desirable or practical means. A detail is a temporary assignment of an employee to a position or to duties other than those regularly assigned, for a specific period, with the employee returning to his regularly assigned duties at end of the detail, as provided by Federal Personnel Manual.

Section 2. The Employer agrees that all details in excess of 30 days will be recorded on an appropriate SF-52 or equivalent. A copy will be furnished to the employee and a copy will be placed in his/her personnel folder.

Section 3. Details to higher graded positions in the bargaining unit which exceed 120 days or 240 days in the case of a major reorganization must be made under the competitive procedures of the Merit Promotion Plan.

Section 4. Details exceeding 120 days to a position in the bargaining unit at the same grade level but with known promotion potential must be made under the competitive procedures of the Merit Promotion Plan. Positions with known promotion potential are career-ladder positions; trainee positions; understudy positions; and positions filled at a grade below the established or anticipated grade.

Section 5. Temporary promotions to positions in the bargaining unit exceeding 120 days must be made under the competitive procedures of the Merit Promotion Plan.

Section 6. Employees shall not be responsible for obtaining approval of details from borrowing and lending Personnel Offices nor for obtaining concurrences for extensions unless the detail or extension is requested by the employee.

## ARTICLE 22

### OVERTIME

Section 1. The Employer may only require employees to work overtime to meet mission or project requirements.

Section 2. Compensatory time and/overtime pay will be administered in accordance with applicable laws and regulations, the provisions of the Fair Labor Standards Act, and/or Section 5543, Title – 5, United States Code.

Section 3. The Employer shall provide employees, within their immediate organizational entities, opportunity to work a fair share of the available overtime for which they are qualified.

Section 4. The participation or non-participation of an employee in overtime work shall not in any manner reflect on his/her appraisal.

Section 5. Overtime shall not be assigned as a reward or penalty.

## ARTICLE 23

### FLEXITIME PROGRAM

Section 1. The business hours of UMTA are 8:30 a.m. to 5:00 p.m. Supervisors must ensure that there is adequate employee coverage of offices during these hours.

Section 2. UMTA employees in a full-time status are required to work an eight-hour day plus the one-half hour lunch period. Supervisors may approve work hours which start as early as 7:00

a.m. or as late as 9:30 a.m. Employees selecting 7:00 a.m. starting time would normally work to 3:30 p.m., those selecting the 9:30 a.m. starting time would work to 6:00 p.m.

Section 3. Employees may arrive as early as 15 minutes prior to their elected starting time or as late as 15 minutes after their elected starting time without any charge being made to leave. It is understood that if an employee arrives 15 minutes early, he or she may leave 15 minutes early. Conversely, if the employee arrives 15 minutes late, he or she must leave work 15 minutes later at the end of the work day.

Section 4. Unless there are unusual circumstances, changes in employee work schedules will not be permitted more than once per quarter. Requests for changes in the starting time should be submitted to the immediate supervisor by memo, when approved, retained by the T&A clerk and implemented at the beginning of the next full pay period. Emergency situations will be handled on an individual basis if they prove an exception to this Section.

Section 5. The lunch period for employees is one-half hour. Employees are not permitted to select their lunch periods at such time that would enable a late arrival or an early departure.

Section 6. When doing so would not cause an adverse impact, supervisors may grant employees' requests for individual, short-term changes to their work schedule (i.e., one pay period or less) for reasons of personal emergency or convenience. Likewise, upon giving reasonable notice (at least 48 hours, unless emergency circumstances do not permit), supervisors may require similar individual short-term changes to employee's schedule when needed to prevent adverse impact on the organization's operation.

Section 7. Recognizing the benefits of flexible hours of work, the Employer will approve employee selections unless to do so would adversely impact upon continuity or efficiency of UMTA operations. Adverse impact would include the following:

- A. Lack of sufficient personnel in appropriate job specialties to provide adequate service to the public or to other organizational units throughout the official hours of business;
- B. Inability to maintain the quality and timeliness of the unit's work; or
- C. Inability to meet requirements for extended coverage or shift coverage.

Section 8. In cases of adverse impact, the Employer may deny or modify an employee's selection or change it subsequent to approval subject to the following guidelines:

- A. The employee shall be consulted in advance.
- B. Every reasonable effort shall be made to give the employee the tour of duty that, without causing adverse impact, is most acceptable to the employee and the Employer.

## ARTICLE 24

### LEAVE

#### Section 1. ANNUAL LEAVE

- A. The taking of earned annual leave is a right of the employee subject to the right of the Employer to fix the time at which leave may be taken. Therefore, this article shall not be interpreted to mandate the granting of a request for annual leave when:
  - 1. The employee does not have the leave to his/her credit; or,
  - 2. The Employer determines that the operational needs of the agency preclude the taking of some or all of the leave requested at the time requested.
- B. Annual leave will be earned and accrued in accordance with applicable laws and regulations. Employees should request annual leave as far in advance as possible.
- C. The Employer shall permit each employee to schedule at least two (2) weeks of consecutive leave for vacation purposes each year in order to allow the employee rest and recreation away from the worksite.
- D. Other than leave scheduled in accordance with subsection C., the employee shall be allowed to take annual leave as necessary for personal emergencies and other matters, subject to the provisions of subsection A. above. Approved annual leave scheduled in advance shall not be withdrawn by the Employer except for legitimate operational needs.

- E. An employee will be granted annual leave for up to five (5) days in the event of death in his/her immediate family. For the purpose of this subsection, immediate family includes (1) spouse; (2) children, including adopted children and foster children, and spouses thereof; (3) parents and spouse's parents; and (4) brothers and sisters and spouses thereof.
- F. An employee will be granted a request for annual leave for an established religious holiday which occurs on a regularly scheduled workday of the employee's basic workweek.
- G. The employer will approve annual leave for two duly elected delegates of the Union for attendance at the Union's Biennial Convention.
- H. In emergency situations when it is not possible to get advance approval, an employee must notify his/her supervisor as soon as possible, normally not later than two hours after the regular reporting time. He/she should explain the circumstances and request approval of the absence. The supervisor will then determine if the absence is justified and either approve the leave or tell the employee he/she is absent without leave
- I. Charging Leave. Annual leave will be charged in 15-minute units or multiples thereof.

## Section 2. SICK LEAVE

Sick leave will be earned, accrued, and approved in accordance with applicable laws, regulations, and this Agreement. Accrued sick leave will be approved when an employee is physically incapacitated for the performance of duties by sickness, injury, pregnancy and confinement, or other related reasons. Such related reasons are:

1. Exposure to a contagious disease that would endanger the health of co-workers if the employee were present at his/her post of duty.
  2. The presence of contagious disease in an employee's immediate family which requires his/her personal care and attendance to the afflicted family member;
  3. Dental, optical, or medical treatment or examination.
- C. When an employee knows in advance that sick leave will be required, the employee shall request leave at the time the necessity for leave is determined.

- D. When the need for sick leave is unanticipated, and sickness or injury prevents the employee from reporting to work, the employee shall notify the supervisor, or an individual designated by the supervisor, as soon as possible. In no event shall notification be made later than two (2) hours after the normal time for reporting to work on the first day of the absence. If the degree of illness or injury prohibits compliance with the two hour limit, the employee will report his/her absence as soon as possible. The notification must include the reason for the absence, i.e., the general nature of the illness/injury, and the expected duration of the absence. When it appears that the absence will extend beyond the original date of anticipated return to duty, the employee shall promptly notify the supervisor of the new anticipated date of return.
- E. A medical certificate will not be required to substantiate requests for approval of sick leave for three (3) days or less unless the employee has been advised in writing that he/she must have such a certificate for any absence on sick leave because of suspected leave abuse. An employee, normally, will not receive a letter requiring a medical certificate unless he/she has first been verbally warned by the supervisor on at least one (1) occasion.
- F. Charging Sick Leave. Sick leave will be charged in 15-minute units or multiples thereof.

### Section 3. LEAVE FOR MATERNITY PURPOSES

- A. The Employer will approve a requested period of leave for up to six (6) months for maternity reasons. The period of leave may consist of a combination of sick leave, annual leave, and leave without pay and will vary in length depending upon the individual and her medical needs. Each category of leave will be processed under the regulations applicable to it. Leave in excess of that initially approved may be granted when there are medical complications involved for either the mother or the newborn.
- B. An employee may use sick leave to cover physical examinations, medical treatment, and the period during which the employee is physically incapacitated for the performance of duties by pregnancy and confinement.

- C. After delivery and recuperation, and if the employee desires a period of adjustment, needs time to make arrangements for care of the child, or to attend to medical problems of the newborn child, an employee may request annual leave for such purposes.
- D. The Employer will make reasonable efforts to accommodate the employee's request for LWOP for maternity reasons.
- E. An employee shall request leave for maternity reasons as far in advance as practical to allow the Employer to prepare for any staffing adjustments which may be needed to compensate for the anticipated absence from duty. The request shall include the types of leave desired, approximate dates, and anticipated duration.
- F. The Employer assures the continued employment of the employee in her position or a position of like tenure and pay if she wishes to return to work following the period of maternity absence, unless termination of employment is based on expiration of appointment, reduction-in-force, for cause, or other reasons unrelated to an approved absence for maternity reasons.

#### Section 4. LEAVE FOR PATERNITY PURPOSES

Where operational conditions permit, a male employee shall be granted a period of leave for up to thirty (30) days for the purposes of assisting or caring for his minor children or the mother of his newborn child while she is incapacitated for maternity reasons. Leave in excess of that initially approved may be granted when there are medical complications involving either the mother or the newborn child or if the employee needs further time to make arrangements for the care of the child. Annual leave or LWOP may be requested for this purpose. Requests will be considered on an individual basis and in accordance with applicable rules and regulations.

#### Section 5. LEAVE FOR ADOPTIVE PARENTS

An employee who adopts a child shall be granted a period of annual leave or leave without pay for up to thirty (30) calendar days beginning with the date of adoption for the purpose of caring for the child.

#### Section 6. MILITARY AND COURT LEAVE

Military and court leave will be granted to employees in accordance with applicable laws and regulations.

## Section 7. EXCUSED ABSENCES

- A. An excused absence is an absence from duty administratively authorized without loss of pay and without charge to leave.
- B. As a general rule, where the polls are not open at least three hours either before or after an employee's regular hours of work and the employee needs additional time to be able to vote he or she shall be granted an amount of excused leave to vote in a civil election which will permit the employee to report for work three (3) hours after the polls open or leave work three (3) hours before the polls close, whichever requires the lesser amount of time off.
- C. When previously approved by the Employer, an employee shall be granted up to four (4) hours of excused absence for recuperation if needed after donating blood.
- D. When the Office of Personnel Management or the Employer determines that it is necessary to close agency operations due to hazardous weather or emergency conditions during which it is not feasible to temporarily relocate employees, all employees will be granted excused absence except those employees whom the Employer deems essential.
- E. Employees shall be granted excused absence when an emergency situation prevents the employee from reporting to work in accordance with UMTA's applicable emergency leave orders.

## Section 8. HOLIDAYS

For employees working a Monday through Friday workweek, holidays falling on a weekend will normally be observed as follows: If a holiday falls on a Saturday, the preceding Friday is normally considered the holiday. If a holiday falls on a Sunday, the following Monday is normally considered the holiday.

## Section 9. LEAVE WITHOUT PAY

- A. Leave without pay is a temporary approved absence from duty in a nonpay status.
- B. A disabled veteran will be allowed to take any combination of annual leave, sick leave, or leave without pay as is necessary for medical treatment of the disability. The employee is required to present an official statement from a duly authorized medical authority that medical treatment is required.

- C. A military reservist or National Guardsman will be allowed to take annual leave, or leave without pay, as requested, for performance of active duty training for periods less than three months.
- D. Employees shall be granted leave without pay to serve as an appointed or elected National or District official of the Union for a period of time to coincide with their terms of office or for two (2) years, whichever is less.
- E. An employee will be granted leave without pay for up to thirty (30) calendar days when the employee is absent because of illness or injury that would otherwise be covered by sick leave when the following conditions are met:
  - 1. The employee's annual and sick leave have been exhausted;
  - 2. There is reasonable assurance that the employee will return to work at the conclusion of the leave period;
  - 3. There has been no record of leave abuse in the preceding twelve (12) months;
  - 4. The absence is supported by a medical certificate showing that the employee is incapacitated for duty;
  - 5. Leave without pay has not been granted under this subsection within the proceeding twelve (12) months.
- F. Approved requests for leave without pay may be terminated with advance notice to the employee when the Employer determines that the operational needs of the agency preclude the granting of such leave.

#### Section 10. TARDINESS

Unavoidable tardiness occurring infrequently may be excused for periods of up to one (1) hour at the option of the supervisor. Longer periods of excused absence may be granted at the option of the supervisor where inclement weather or an emergency situation causes large numbers of employees to be unable to reach work on time. Employees in similar circumstances shall not receive disparate treatment.

## ARTICLE 25

HEALTH AND SAFETY-ON-THE-JOB

Section 1. The Employer agrees to distribute a copy of UMTA Order 3900.1A. UMTA Occupational Safety and Health Program, (dated May 22, 1979) to all UMTA employees. Following this one time mass distribution, the Employer will provide a copy of this Order to all new employees as part of the hiring process.

Section 2. The Employer agrees to provide training to supervisory personnel as to their responsibilities concerning the UMTA Occupational Safety and Health Program e.g., the need for providing a safe work place, the need to respond to employees concerns about unsafe work situations, the need to report unsafe conditions and the need to take corrective action on unsafe conditions.

## ARTICLE 26

ON THE JOB INJURY

Section 1. The Employer agrees to distribute a copy of UMTA Order 3701.1, On-The-Job-Injuries (dated 4-20-79) to all UMTA employees. Following this one time mass distribution, the Employer will provide a copy of this Order to all new employees as part of the hiring process.

Section 2. The Employer agrees to provide training to supervisory personnel and T&A Clerks as to their responsibilities concerning on-the-job-injuries to UMTA employees; i.e., the need for immediate medical attention, assistance in completing proper forms, explanation of leave options (45 day continuation of pay, annual leave, sick leave, or leave without pay).

## ARTICLE 27

ALCOHOL AND DRUG PROGRAM

Section 1. The Employer recognizes alcoholism and drug abuse as illnesses which are treatable.

Section 2. The Employer agrees to develop and maintain assistance and counseling services for employees with alcohol or drug related problems, while properly recognizing the employee's right to privacy.

Section 3. Any employee who participates in these services will be entitled to all of the rights and benefits provided to, and be subject to the same responsibilities and obligations expected of, other employees who are ill. Participating employees will also be entitled to specific services and assistance which this program will provide.

Section 4. The Employer will advise the Union of the general administrative policy of the program. The Union may provide any comment or observations about the operation of the program.

Section 5. The earlier that an employee's problem relating to alcoholism or drug abuse can be identified, the more favorable are the chances for a satisfactory solution. Any time a supervisor observes a deterioration in an employee's performance which the supervisor believes may be drug or alcohol related, the supervisor will recommend that the employee avail himself or herself of the agency's assistance and counseling program.

Section 6. Unless to do so would impose an undue hardship on operations, employees who have alcohol or drug abuse problems shall be provided an opportunity to participate in counseling and in any resultant rehabilitation program.

Section 7. Any employee may seek help through the alcohol and drug abuse program on his or her own initiative.

Section 8. An employee shall not have his/her job security or promotion opportunities jeopardized by a request for counseling or referral assistance (except as limited by Title II, Section 210(c)(2) of P.L. 91-616, and Section 413(c)(2) of P.L. 91-255, relating to sensitive positions).

Section 9. To the extent feasible, management will make temporary accommodations to the employee's condition when it appears that these accommodations will facilitate the treatment process while keeping the employee in a productive capacity. In no instance will the Employer be required to continue these accommodations beyond the employee's withdrawal from treatment.

## ARTICLE 28

TEACHING, SPEAKING, AND WRITING RIGHTS

Section 1. Employees, as individuals, have the right and are encouraged to engage in teaching, speaking, and writing which is not prohibited by law, Executive Order, or UMTA regulations. No employee may, however, either with or without compensation, engage in teaching, speaking, or writing that is dependent on information obtained as a result of the employee's Government employment, except when that information has been made available to the general public or will be made available to the general public on request or when the use of nonpublic information has been authorized by the Employer, in writing, on the basis that it would be in the public interest.

Section 2. In delivering a speech, or in presenting a writing, the employee must make it clear that he/she does not represent the Employer or the Department of Transportation, and that the views expressed are the employee's own.

Section 3. When a report (of a theoretical as opposed to operational nature), is developed and published by the Employer, the unit employee responsible for developing the report shall, on request, have his/her name listed as author or project director.

Section 4. Employees are expected to refrain from engaging in a workload of such outside activities which will have an adverse affect on their work performance.

## ARTICLE 29

EMPLOYEE'S RIGHT TO PETITION CONGRESS

Section 1. The right of employees, individually or collectively, to petition Congress or a member of Congress, or to furnish information to either House of Congress, or to a committee or member thereof, may not be interfered with or denied.

## ARTICLE 30

TRAVEL

Section 1. Where possible, travel shall be authorized or ordered sufficiently in advance to enable the employee to obtain a travel advance prior to starting such travel.

Section 2. Employees will not be required to use personally-owned automobiles for travel to temporary duty posts or details.

Section 3. In situations in which the assistance of an attendant or escort for a handicapped employee must be provided if the travel is to be accomplished, the transportation and per diem expenses of the attendant will be allowed as necessary expenses for travel in accordance with relevant laws and regulations.

Section 4. In situations where an employee has a problem with a particular mode of travel, management will make an effort to accommodate the employee's problem in accordance with existing Government-wide and agency travel regulations.

Section 5. The Employer shall, to the extent practical, schedule the time to be spent by an employee in a travel status within the regularly scheduled work week of the employee.

## ARTICLE 31

EMPLOYEE DEBTS

Section 1. The Parties recognize that all unit employees are expected to pay all just financial obligations. A just obligation is one which the employee acknowledges as being just, one issued by law, such as state or local taxes, or one which has been reduced to a judgment by court means.

Section 2. Supervisors and/or management officials shall not assist creditors in dunning employees.

Section 3. Supervisors and/or management officials who are solicited for assistance in debt collection shall respond by referring the creditor to the Director of Personnel.

Section 4. The Director of Personnel shall counsel the employee concerning the obligation of Federal employees, as recognized by

Section 1 of this Article. If the debt is not just as defined in Section 1, the Director of Personnel will not counsel the employee (unless requested) nor seek to have the employee acknowledge the debt as just.

Section 5. There shall be no disciplinary actions in connection with an employee's debt unless there is a nexus with the employee's employment.

## ARTICLE 32

### TRAINING

Section 1. The parties agree that training of employees in the unit to improve their proficiency and to build qualifications for more responsible job assignments and for upward mobility is important.

Section 2. The employees shall be encouraged to discuss their training interests with their immediate supervisors and with the UMTA Office of Personnel.

Section 3. The Employer shall publicize government and non-government training opportunities to all bargaining unit employees.

Section 4. The assignment of employees to government-sponsored training shall be an Employer-supervisory responsibility, after discussion with employees who have expressed interest in the training. Employees whose request for government-sponsored training is denied will be advised by their supervisors of the reason(s) for denial.

Section 5. UMTA sponsored training can be provided for employees within authorized funding when the training is directly related to the performance of their official duties and is intended to improve performance in the employee's present position. Additionally for an employee GS-7 and below UMTA sponsored training may be provided to assist in the better performance of present duties and to prepare for additional responsibilities in the present line of work or in a different, but attainable line of work within the Department of Transportation. All employees will receive fair and equitable consideration for available training opportunities without regard to race, color, national origin, sex, or other factors unrelated to the need for training.

## ARTICLE 33

RECOGNITION AND AWARD PROGRAM

Section 1. All awards (except those given for valor, service to the community, and other similar types of awards) must be based on performance connected with official employment.

Section 2. By January 31 of each year, the Employer shall provide the Union with a list of all employees who received awards during the preceding calendar year and the type of award received.

## ARTICLE 34

RETIREMENT, SEPARATIONS, AND RESIGNATION

Section 1. The Employer will provide retirement counseling to be made available on an as needed basis, including not less than one open session annually. It will include counseling assistance and information material.

Section 2. Each employee who separates, except by retirement, will be counseled by the employer concerning disability retirement, discontinued service retirement, or deferred annuity, as applicable, in accordance with OPM regulations.

Section 3. An employee may withdraw a resignation or retirement application at any time prior to its effective date, provided the withdrawal is communicated to the Employer in writing and received by the Employer prior to the Employer having made a selection to fill the position or a decision not to fill the position, or not to fill the position at its present grade or occupational series.

## ARTICLE 35

PROBATIONARY EMPLOYEES

Section 1. During the probationary period, the employee's conduct and performance in the actual duties of the position will be observed, and the employee will receive a quarterly evaluation included, as appropriate, notice of intention not to retain the employee.

Section 2.

- A. During the probationary period of the employee, the supervisor will:
1. Closely observe the employee's conduct and performance.
  2. Provide guidance in regard to work-related problems. When it appears that the employee's performance or conduct may be lacking, the supervisor will (a) explain what is required of the employee in the position; (b) identify areas where the employee needs improvement and (c) suggest ways or means for the employee to improve his/her performance or conduct.
  3. Evaluate the employee's potential and attempt to determine whether the employee is suited for continued employment with the Employer.
- B. Employees will be entitled to counseling by the supervisor(s) upon request. The counseling session will include those areas in which the employee has indicated he/she would like further guidance or knowledge.
- C. The Employer shall advise the employee of the right to have a union representative present at counseling sessions, if disciplinary or adverse actions are contemplated and are to be discussed.

## ARTICLE 36

PERFORMANCE APPRAISAL

UMTA Order 3420.2, Performance Appraisal System for UMTA Employees Not Covered By Merit Pay, dated June 15, 1981, is incorporated by reference into this Agreement.

## ARTICLE 37

ACCEPTABLE LEVEL OF COMPETENCE

Section 1. When a supervisor's evaluation leads to a conclusion that the employee's work is not at an acceptable level of competence, the supervisor will provide to the employee in

writing, at least sixty (60) days before the employee is eligible for a within-grade increase, except as provided in Section 4, the following:

- A. An explanation of those aspects of performance in which the employee's services fall below an acceptable level;
- B. Advice as to what the employee must do to bring his/her performance up to the acceptable level;
- C. A statement that his/her performance may not be determined as being at an acceptable level unless improvement to an acceptable level is shown;
- D. A statement that he/she has a period of sixty (60) days in which to bring his/her performance up to an acceptable level.

Section 2. If a notice was necessary under Section 1, the employee will be notified in writing of his/her supervisor's determination at the end of the required waiting period. If the employee's performance is acceptable, the notice referenced under Section 1 will be cancelled. If the employee's performance is not at an acceptable level of competence, the Employer will notify the employee in writing that the within-grade increase will be withheld. The notice shall include reasons for the action and shall also inform the employee of his/her right to request administrative reconsideration, to whom the request should be made, and the time limit in which the employee must request reconsideration. Appeals of reconsiderations decisions may be filed only through the grievance and expedited arbitration procedures under this Agreement.

Section 3. An employee shall not be denied a within-grade increase for reasons other than job performance. The act of withholding a within-grade increase is not an adverse action in and of itself. However, the factual situations relied on to withhold a within-grade increase may form the basis for adverse actions such as demotion or removal. Such proposed adverse actions are not barred by this Article; however, they must be processed as separate action.

Section 4. The notice required under Section 1 of this article may be issued at any time prior to the eligibility date for a within-grade increase, but if it is issued less than 60 days prior, the employee shall receive an automatic redetermination 60 days after the issue date. If this redetermination is favorable to the employee, the within-grade increase will be made retroactive to the date of eligibility.

## ARTICLE 38

ACTIONS BASED ON UNACCEPTABLE PERFORMANCESection 1.

- A. Actions covered by this Article are reduction in grade and removal based on unacceptable performance of official duties.
- B. This Article applies to employees in bargaining unit positions at the time the action is proposed.
- C. Such actions will be proposed in a timely manner.

Section 2. Prior to proposing an action covered by this Article, the Employer will consider the utilization of corrective measures to provide the employee an opportunity to demonstrate acceptable performance. Examples of corrective measures are counseling sessions, training and more direct supervision. Time devoted to such measures will not be construed as making the action untimely.

Section 3. At the employee's request, he/she may be represented by the Union or other representative at any meeting or discussion concerning an action proposed under this Article.

Section 4. An employee whose reduction in grade or removal is proposed under this Article is entitled to:

- A. Thirty days advance written notice of the proposed action which identifies:
  - 1. Specific instances of unacceptable performance by the employee on which the proposed action is based; and
  - 2. The critical element(s) of the employee's position involved in each instance of unacceptable performance.
- B. Be represented by the Union or other representative;
- C. A reasonable time to answer orally and in writing; and
- D. A written response which:

1. Specifies the instances of unacceptable performance by the employee on which the action is based; and
2. Has been concurred in by an official who is in a higher position than the official who proposed the action.

Section 5.

- A. The notice period prescribed under Section 4 of this Article may be extended for not more than 30 days. Further extensions (i.e., beyond a total notice period of 60 days) must have the prior approval of OPM.
- B. An action under this Article must be taken no later than 30 days following the expiration of the proposed notice.

Section 6. Actions under this Article may be based only on instances of unacceptable performance which occurred during the 1-year period ending on the date of the proposed notice.

Section 7. If an action proposed under this Article is not taken, all records related to it, and to the allegedly unacceptable performance will be removed from the employee's official personnel records not later than one year following the date of the proposed notice.

Section 8. Upon proposing an action under this Article, the Employer will establish a case file which contains all documentary materials relevant to the action being proposed. This file will be provided to the employee or his/her properly authorized representative upon request. Designation of representative must be made in writing and signed by the employee.

Section 9. The employee and his/her representative will be given a reasonable amount of official time in connection with an action proposed under this Article.

Section 10.

- A. An employee may appeal an action taken under this Article through the grievance arbitration procedures contained in Articles 47 and 48 of this Agreement or under the appellate procedures of 5 USC 7701, but not both.
- B. The standard of proof in an arbitration of an action taken under this Article will be substantial evidence.

## ARTICLE 39

QUALITY STEP INCREASE

Section 1. To be considered for a quality step increase, an employee must:

- A. Perform the duties and responsibilities of his assigned position at a level that substantially exceeds an acceptable level of competence so that when viewed as a whole, the employee's performance is at a high level of quality; and
- B. Sustain performance at that level for a period of time sufficient to conclude that such a level is characteristic of his/her performance and is expected to continue in the future.

Section 2. The decision to grant a quality step increase to an employee must be supported by the employee's most recent appraisal. Where the appraisal is more than 60 days old and does not support a quality step increase, a supplemental written statement setting forth the reasons for granting the quality step increase must be prepared. This documentation shall be filed in the employee's official personnel records.

Section 3. A quality step increase shall be effective not later than the first day of the first pay period following the first full pay period after the approval date.

Section 4. The approval of quality step increases will be:

- A. Fair and just to all employees;
- B. Reasonably consistent throughout the Agency;
- C. Devoid of personal favoritism;
- D. Consistent with merit system principles; and
- E. In accordance with applicable laws and regulations.

Section 5. The Employer will provide at least annually to the Union the number of quality step increases granted in the Agency by grade level.

## ARTICLE 40

EMPLOYEE INTERVIEWS

Section 1. The Union shall be given the opportunity to be represented at:

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

Section 2. The agency shall annually inform its employees of their rights under Section 1, B, of this Article. A notification by OST to all DOT employees of their rights under 5 USC 7114(a)(2)(B) shall be considered to fulfill this requirement.

## ARTICLE 41

NOTICE TO EMPLOYEES

Section 1. An employee who receives a personally addressed notice, proposal or correspondence from the employer concerning:

- A. An adverse action;
- B. A disciplinary action;
- C. A reduction-in-force;
- D. Leave restriction
- E. Denial of a within-grade salary increase;
- F. A fitness for duty examination not in connection with any request by the employee;

- G. A denial of a request for outside employment; or
- H. Reassignment or transfer (on request of the employee)

shall receive an additional copy which states at the top of the first page “This copy may at your option be furnished to your Representative.”

Section 2. Each new unit employee shall receive from the Employer a copy of this Agreement, which will serve to inform the employee (A) of the right to form, join, or assist a labor organization, or the right to refrain, and (B) that the employee is protected in the exercise of such rights.

## ARTICLE 42

### DISCIPLINARY AND ADVERSE ACTIONS AND LETTERS OF WARNING

Section 1. (A) Disciplinary actions are written reprimands and suspensions of 14 days or less. (B) Adverse actions are removal, suspension for more than 14 days, reduction in grade or pay, and furlough for 30 days or less.

Section 2. Disciplinary and adverse actions shall be accomplished without undue delay, and only for just cause. Where appropriate, the Employer will consider on a case-by-case basis remedial measures other than disciplinary or adverse action.

Section 3. Other relevant circumstances being equal, like penalties will be imposed for like offenses.

Section 4. The following procedures will apply to written reprimands:

- A. The employee may respond to the reprimand in writing. A copy of the response will be placed in his/her OPF.
- B. Reprimands will be filed on the temporary side of the OPF, where they will remain for no longer than two years.

Section 5. The following procedures will apply to suspensions of 14 days or less:

The employee will receive:

- A. An advance written notice stating the specific reasons for the proposed action;

- B. A reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;
- C. The right to be represented by an attorney or other representative; and
- D. A written decision and the reasons therefore at the earliest practicable date.

Section 6. The following procedures will apply to adverse actions:

The employee will receive:

- A. At least 30 days advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;
- B. A reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;
- C. The right to be represented by an attorney or other representative; and
- D. A written decision and the specific reasons therefore at the earliest practicable date.

Section 7. Requests for reasonable extensions of time limits will be considered by the agency on a case-by-case basis.

Section 8. When the employee does not elect to have union representation at an oral response, the Union will be permitted to have an observer present, provided the employee does not object.

Section 9. With the exception of records for pay purposes, no record of a disciplinary or adverse action determined to be unfounded will be kept in official personnel records.

Section 10. Employees shall be protected against disciplinary and adverse actions which are taken arbitrarily and capriciously, or on the basis of personal animosity, prohibited personnel practices as defined by 5 U.S.C. 2302, and improper reprisal or coercion. No disciplinary or adverse action shall be taken on the basis of illegal discrimination.

Section 11. In connection with a proposed disciplinary or adverse action against an employee, the employee is entitled to review all the material upon which the Employer relied as support for the proposed action. In addition, with the exception of security information and reports which may not be reproduced, the affected employee or the employee's representative will be given a copy of such material upon request.

Section 12. Letters of warning may be issued by supervisors for remedial purposes. They are not disciplinary or adverse actions, and will not be placed in the employee's official personnel records, except that they may subsequently be used as supporting documentation for a disciplinary or adverse action. Such letters are grievable.

## ARTICLE 43

### REORGANIZATION PROCEDURES

#### Section 1.

- A. Since the implementation and impact of reorganization are of great concern and importance to employees, the Employer shall keep the Union fully informed of all prospective reorganizations.
- B. The Union will be advised of prospective reorganizations at the earliest possible opportunity.

Section 2. The Union will be provided with advance copies of any and all reorganization plans involving employees in the bargaining unit, together with any and all background information, studies and data necessary for the Union to make reasoned determinations of the impact of prospective reorganizations on employees and conditions of employment, excluding internal management planning documents.

Section 3. The Union shall be provided with periodic briefings by agency officials capable of providing such information in an informed manner. The emphasis of such briefings shall be on the potential impact of the reorganization(s) on the numbers, types, and grades of employees assigned to any organizational subdivision, work project, or tour of duty; or the technology, methods, and means of performing work; and/or other conditions of employment.

Section 4.

- A. The Union will be provided with an opportunity to make written suggestions and advisory recommendations with respect to any prospective reorganization in order to lessen the adverse impact of the reorganization on employees and conditions of employment.
- B. The agency agrees to give due consideration to the Union's suggestions and advisory recommendations in arriving at the agency's determinations with respect to the implementation of the reorganization.

## ARTICLE 44

REDUCTION-IN-FORCE

Section 1. When preparing for reduction-in-force, the Employer will keep outside hiring to a minimum.

Section 2. The Employer will provide the Union with the following information regarding any reduction-in-force:

- A. Total number of positions to be affected.
- B. Type of anticipated action (separation, downgrades, reassignment, etc.).
- C. Proposed competitive area.
- D. Proposed competitive levels.
- E. Title, grade, and series of all affected positions.
- F. Location of retention registers.
- G. Whether or not early retirement authorization will be requested.
- H. Proposed beginning date of the reduction-in-force.
- I. Proposed effective date of the reduction-in-force.
- J. Which employees received performance credit on their service computation dates.

Section 3. When it appears that OPM guidelines will be met, the Employer shall request that OPM determine that the Agency is undergoing a major reduction-in-force for the purpose of authorizing voluntary retirements under 5 USC 8336(d) (2).

Section 4. To minimize the adverse effect upon employees in a reduction-in-force situation, the Employer will attempt to accomplish reductions in strength through attrition prior to implementing reduction-in-force procedures.

Section 5. Prior to and during a reduction-in-force, the Employer shall meet individually with employees eligible for optional or involuntary retirement to explain its benefits, upon the employee's request.

Section 6. The Employer will not establish qualifications requirements that are not reasonably related to the duties of the position.

Section 7. The Employer shall identify all continuing positions for which the Employer faces shortages of applicants and to the maximum extent feasible within budgetary limitations, train employees affected by RIF who have potential for reassignment to those positions.

Section 8. The Employer will not unduly restrict competitive levels. Positions in a competitive level should be similar in duties, responsibilities, pay schedules, terms of appointments; similar in requirements for experience, training, skills, and aptitudes.

Section 9. Retention registers shall be established and employees listed in the order of their tenure group, subgroup, and retention standing.

Section 10. An employee affected by reduction-in-force and/or his/her representative will be given the opportunity to review all records pertaining to the action except internal management planning documents, but including regulations concerning RIF. These records will be maintained for at least one year.

Section 11. An employee and/or his/her representative will be given the opportunity to review retention registers for positions which the employee and/or his/her representative reasonably believes may affect the employee's RIF action. This will include retention registers listing other employees who may be entitled to displace him/her as well as employees he/she may be entitled to displace.

Section 12. The Employer shall guarantee the best offer of employment to all employees affected through implementation of the reduction-in-force procedures in a position as close to their current grade as possible.

Section 13. The Employer shall provide complete information needed by employees to fully understand the reduction-in-force and why they are affected. Specifically, the Employer shall:

- A. Inform all employees as fully and as soon as possible of plans or requirements for reduction-in-force in accordance with applicable rules and regulations.
- B. Inform all employees of the extent of the affected competitive area, the regulations governing reduction-in-force, and the kinds of assistance provided for affected employees.

Section 14. The Employer shall provide a specific written notice to each employee affected by the reduction-in-force, if released from their competitive level, at least thirty (30) calendar days prior to the effective date. The notice shall state specifically what action is being taken, the effective date of the action, the employee's service computation date and subgroup. It shall describe the employee's competitive area and the competitive level, and tell him or her why any lower standing employee is retained in his or her competitive level for more than thirty (30) calendar days. Rights of appeal under the negotiated grievance procedure and time limits on such appeals will also be in the notice. Employees will be authorized to make a photocopy of the notice on the Employer's time and equipment.

Section 15. Employees on detail will not be released during reduction-in-force from the position of detail, but rather the employee's permanent position.

Section 16. Experience as a Union official shall be counted, in any evaluation of employee's experience in accordance with OPM Handbook X-118 or X-118c.

Section 17. At the time of issuing specific notices, the Employer shall provide the Union with (A) a correct, annotated and current retention register and (B) a correct, current listing of all chains.

Section 18. Union representatives will be furnished with documents and information, related to specific RIF actions, as quickly as possible and without need of recourse to FOIA or Privacy Act provisions.

## ARTICLE 45

### REEMPLOYMENT PRIORITY LIST

Section 1. Career and career-conditional employees occupying competitive positions who are separated from the service as the result of a RIF are entitled to reemployment priority consideration in accordance with the provisions of the Reemployment Priority List (RPL). However, an employee who declines an offer under RIF procedures of a competitive non-temporary position in the same commuting area with the same work schedule and a representative rate no lower than the position from which separated will not be entitled to reemployment priority consideration and will not be placed on the RPL.

Section 2. When a qualified person is available from the RPL, UMTA may not fill a vacant competitive position within UMTA Headquarters, by the new appointment of any person except a 10-point preference eligible.

Section 3. The names of employee(s) on DOT'S RPL will be considered by the selecting official prior to any action being taken to competitively fill the position from outside of DOT, unless (A) broader consideration is required by a DOT or UMTA personnel program; (B) an employee has a regulatory or statutory right to be placed in a vacancy; or (C) the position is filled in accordance with the provisions of any UMTA Placement Assistance Plan. In this consideration process, selecting officials, to the extent feasible, will seriously consider the qualifications which relate to UMTA programs.

Section 4. If an employee(s) is referred under the RPL and no selection is made from among RPL eligible(s), the reasons for the non-selection must be based on job-related considerations and documented accordingly. This documentation will take the form of a memorandum from the selecting official.

Section 5. An employee will automatically be considered for all competitive positions in the DOT in the commuting area at all grade levels for which qualified and eligible as determined from the most recent SF-171 in the OPF unless the employee restricts

his/her consideration. Within 10 days from the receipt of the RIF notice, an employee may limit consideration by indicating those positions or types of positions for which the employee is qualified based on OPM qualification standards, and immediately available and for which he/she wishes to be considered. An employee at his/her option may limit his/her availability to positions in the UMTA bargaining units. An employee is eligible to be placed only on the RPL for the commuting area in which the position is assigned for RIF purposes.

Section 6. A full-time employee's name is removed from the RPL when the employee accepts any non-temporary, full-time competitive position regardless of its grade or pay or declines a non-temporary, full-time competitive position with a representative rate the same as, or higher than, the position from which separated.

Section 7. Except as provided in Section 6, Group I employees remain on the RPL for two years from the date of separation. Group II employees remain on the RPL for one year from the date of separation. An employee may have his/her name removed from the RPL at any time by submitting a written request.

Section 8. The operation of the Placement Assistance and the Reemployment Priority List in no way diminishes management's commitment to the principles of equal employment opportunity. Selections under the plans shall be made without regard to political or religious affiliation or non-affiliation, marital status, race, color, sex, national origin, non-disqualifying physical handicap, or age.

Section 9. An employee who wishes to appeal an action which the employee thinks has violated his/her reemployment priority rights must file his/her appeal with the Merit Systems Protection Board in accordance with the procedures established by the Board for filing such appeals. See 5 CPR, Section 330.202. Any disagreement over the interpretation and application of this agreement which could not be included as a part of such an appeal by an employee may be grieved by the Union under the negotiated grievance procedure.

## ARTICLE 46

### PLACEMENT ASSISTANCE PLAN

Section 1. The purpose of the UMTA Placement Assistance Plan (PAP) is to provide a means by which employees who have been involuntarily downgraded through no fault of their own may be

expeditiously placed in a position equal in grade, tenure, and tour of duty with the position from which the employee was downgraded. An employee who is granted grade and/or pay retention under the provisions of 5 U.S.C. Sections 5362, 5363, and 5364, 5 CFR Part 536, shall be entitled to priority placement in accordance with the provisions of the PAP. Priority placement will cease when grade and/or pay retention terminates in accordance with the provisions of 5 U.S.C. Sections 5362, 5363, 5364, and 5 CFR Part 536.

Section 2. “Priority placement” shall mean, for purposes of this Agreement, the placement of certain employees in positions of grade, tenure, and tour of duty equal to the position from which the employee was downgraded, prior to any action being taken to competitively fill the position. This definition shall not be interpreted as requiring the Employer to fill a vacant position or to place an employee in a position in which the employee cannot satisfactorily perform the duties because of:

- A. Physical, mental, or emotional incapacity;
- B. Lack of specialized experience qualifications;
- C. Lack of positive education qualifications; or
- D. Other job-related considerations.

Section 3. The names of employee(s) eligible under the PAP will be forwarded on a separate list to the selecting official prior to any competitive action being taken to fill the position.

Section 4. An employee need take no action to receive placement assistance. It will be given automatically to those employees meeting the requirements for placement assistance. If an employee(s) is referred for placement assistance and no selection is made from among the placement assistance eligible(s), the reasons for the nonselection must be based on job-related considerations and documented.

Section 5. The most recent SF-171 in the Official Personnel Folder (OPF) will be used to determine basic eligibility for positions. It is the employee’s responsibility to ensure that an up-to-date and accurate SF-171 is in the OPF. Upon request by the employee, the services of the Office of Personnel shall be extended to the employee in preparing an updated SF-171.

Section 6. Subject to the provisions above, priority placement applies to each vacancy in UMTA Headquarters equal in: grade level; tenure; tour of duty; and in the same commuting area as the position from which the employee was downgraded. This provision begins on the date the employee starts receiving

benefits under grade and/or pay retention provisions, provided: (A) the employee meets the basic qualification requirements for the position; and (B) no other employee has a statutory or regulatory right to be placed in the vacancy.

Section 7. When it has been determined by the Office of Personnel that there is no reasonable opportunity for placement, basic qualification requirements may be waived for employees who are receiving grade retention benefits, provided the employee has the capacity, adaptability, and special skills required by the position. However, positive education requirements may not be waived.

Section 8. When it has been determined by the Office of Personnel that there is no reasonable opportunity for placement in a position at the employee's grade level, employees entitled to grade/pay retention may be given the opportunity to acquire, through training or developmental assignments, qualifications for other positions.

Section 9. An employee will be given a period of five calendar days from the employee's receipt of written offer to accept or reject an offer of placement under the PAP. If the 5-day period ends on a Saturday, Sunday, or holiday, the employee's response is due the following workday.

Section 10. Upon the written request of the employees entitled to priority consideration and upon delivery of a copy of the employee's SF-171, the Office of Personnel will refer the provided SF-171 to other Personnel Offices in the Department in the same commuting area.

Section 11. Unless otherwise mutually agreed to by the affected employee and the selecting official, an employee will be officially placed in the position which he/she has been offered and has accepted effective no later than the beginning of the pay period following the first full pay period after the date of the employee's acceptance.

Section 12. An employee who wishes to appeal any termination of grade or pay retention benefits based on the declination of a reasonable offer, must file his/her appeal with the Office of Personnel Management in accordance with the procedures established for filing such appeals. See 5 CFR, Section 536.302. Any disagreement over interpretation and application of this agreement which could not be included as a part of such an appeal by an employee may be grieved by the Union under the negotiated grievance procedure.

## ARTICLE 47

GRIEVANCE PROCEDURESection 1. Definition and Coverage

- A. The purpose of this Article is to provide a method for the timely processing and resolution of all grievances of unit employees and the parties to this Agreement.
- B. Subject to the exclusions set forth in subsection C of this section, a grievance is any complaint:
  - 1. By any employee concerning any matter relating to the employment of the employee;
  - 2. By the Union concerning any matter relating to the employment of any employee;
  - 3. By any employee, the Union, or management concerning:
    - (a) the effect or interpretation, or a claim of breach, of this Agreement, or
    - (b) any claimed violation, misinterpretation or misapplication of any law, rule, or regulation affecting conditions of employment.
- C. This Article shall not apply with respect to any grievance concerning:
  - 1. Any claimed violation of subchapter III of Chapter 73 of Title 5, United States Code (relating to prohibited political activities);
  - 2. Retirement, life insurance, or health insurance;
  - 3. A suspension or removal for national security reasons under Section 7532 of Title 5, United States Code;
  - 4. Any examination, certification, or appointment;
  - 5. The classification of any position which does not result in a reduction in grade or pay of an employee;
  - 6. Nonselection for promotion from a group of properly ranked and certified candidates;
  - 7. An action which terminated a temporary promotion within a maximum of two (2) years or a term promotion under 5 CFR Part 335 and returns the employee to the position from which the employee was temporarily promoted, or reassigns the employee to a different position that is not lower in grade or pay than the

position from which the employee was temporarily or term promoted.

8. Nonadoption of a suggestion or disapproval of a quality step increase or performance award, or any other kind of honorary or discretionary award;

9. A preliminary warning or notice of an action which, if effected, would be covered under this grievance procedure or under a statutory appeals procedure;

10. Actions involving selection for positions not in the unit

11. The critical elements and performance standards of an employee's position established in accordance with the requirements of 5 USC 4302 and Part 430 of Title 5, CFR;

12. The termination of an employee during a probationary or trial period.

- D. Matters not raised in the first step of the Grievance Procedure by any of the parties shall not be raised in later steps, unless germane to the original issue(s) grieved.
- E. Issues of non-grievability or non-arbitrability may be raised at any step, but shall not delay procedures. Such issues may be resolved under the procedures of Article 48 Arbitration if the parties move to arbitration.

## Section 2. Exclusivity of Procedure

This grievance procedure is the sole procedure available to the parties and unit employees, except for those matters specified in Section 3.

## Section 3. Election of Remedies

- A. An aggrieved employee affected by a prohibited personnel practice under 5 USC 2303(b) (1) (equal employment opportunity violations) may raise the matter under this grievance procedure or under a statutory procedure. but not both. The employee shall be deemed to have exercised his/her option at such time as the employee timely initiates an action under the applicable statutory procedure by filing a written complaint in accordance with those procedures or timely files a grievances in writing, under this Article,

whichever occurs first. Any precomplaint action by the employee in discussing the matter with an Equal Employment Opportunity Counselor does not stay the time limits for filing a grievance on the matter under this Article.

- B. An aggrieved employee reduced in grade or removed by an action based on unacceptable performance under 5 USC 4304 or reduced in grade, removed or suspended for more than fourteen (14) days, or furloughed for thirty (30) days or less by an adverse action as defined in 5 USC 7512, may appeal the action under this grievance procedure or under the appellate procedures of 5 USC 7701 (appeals to the Merit System Protection Board), but not both. An employee shall be deemed to have exercised his/her option at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing under this Article, whichever occurs first.

#### Section 4. Procedures for Filing

- A. Employees are entitled to be assisted by the Union in presentation of grievances.
- B. Any employee or group of employees may file a grievance under this procedure and have it adjusted by management without involvement by the Union provided that the grievance adjustment is not inconsistent with the terms of this Agreement, and that the Union has been given the opportunity to be present at the adjustment of the grievance. The Employer will provide a copy of any grievance filed under this subsection to the Union.
- C. A grievance may be filed by employees as a group; or individual grievances may be combined as a group grievance during processing when the parties agree that such an action would be appropriate.
- D. Only the Union or the Employer may invoke arbitration.

#### Section 5. Time Limits

- A. All grievances under this Article must be filed within eighteen (18) days following:
  - 1. The date of the incident which gives rise to the grievance; or
  - 2. The date upon which the aggrieved became aware of the incident out of which the grievance arises. In no

circumstances, however, may a grievance be filed more than eighteen (18) months from the date of the incident which gave rise to the grievance.

- B. Grievances about a continuing practice or condition must be filed within sixty (60) days following the date upon which the aggrieved first became aware of or could reasonably be expected to become aware of the continuing practice or condition.
- C. Any time in this Article may be extended by mutual agreement of the Parties. Reasonable efforts will be made to mutually agree to extensions of time where there is good and sufficient cause for such requests.
- D. If at any point in this procedure involving a grievance initiated by an employee, the employee and/or the Union states that the matter has been resolved satisfactorily, the grievance shall be considered resolved and there will be no further action concerning the grievance.
- E. Days, for purpose of this grievance procedure and the arbitration procedure set forth in Articles 47 and 48, means calendar days. However, if the last day in a given time period falls on Saturday, Sunday, or federal legal holiday, the next day which is neither a Saturday, Sunday, or Federal legal holiday shall be considered the last day of the period.
- F. If a grievant fails to meet any of the time limits set forth in this Article, the grievance shall be considered terminated. If the respondent fails to meet any of the time limits set forth in this Article, the grievant will be entitled to move the grievance to the next step without an answer.

#### Section 6. The Form of the Grievance

- A. Any grievance filed under any step of this grievance procedure shall be in writing and shall contain:
  - 1. A statement setting forth the facts upon which the grievance is based;
  - 2. The event, action, practice, or condition being grieved;
  - 3. Identification of the specific Article and Section of this Agreement or specific law or regulation alleged to have been violated, if applicable;
  - 4. The corrective action sought; and
  - 5. Designation of a representative, if any.

- B. All grievances, responses, and other submissions relating to any grievance shall be hand delivered or delivered by certified mail. If hand delivered, two copies of the grievance shall be submitted; one copy shall be initialed by the person receiving the grievance and returned to the presenter.
- C. Any grievance at any step will be considered filed when initialed by the person receiving the grievance or on the date contained on the certified mail receipt.

#### Section 7. Employee Grievances

- A. Employees, Union representatives, supervisors, and other management representatives agree to cooperate fully toward resolving potential grievances informally and at the lowest level of supervision. To that end, employees are encouraged to discuss their dissatisfactions with their immediate supervisors in order to resolve potential grievances. The employee may have a Union representative during this discussion, if he/she so requests.

- B. Step 1

The Union may submit grievances on behalf of the employees or employees may submit grievances on their own behalf with the first-level supervisor. In either event, a reasonable amount of official time will be given to the grievant and/or Union representative to present the grievance if they would otherwise be in a duty status. Prior to making a decision, the supervisor, if so requested in the written grievance submission, shall afford the employee and/or the employee's representative an opportunity to present the grievance orally. Within fourteen (14) days of receipt of the written grievance or conclusion of the oral presentation, whichever is later, the supervisor will issue a written decision on the grievance.

- C. Step 2

If the proposed resolution is not satisfactory or no decision is rendered, a written second step grievance may be submitted within seven (7) days after receipt or the time for receipt of the immediate supervisor's reply to the grievant's second-level supervisor or Office Director, whichever is higher. Prior to making a decision, the supervisor or Office Director, if so requested in the written grievance submission, shall afford the employee and/or the employee's representative an opportunity to make an oral presentation. A reasonable amount of official time will be given to the

grievant and/or the Union representative to present the grievance if they would otherwise be in a duty status. Any oral presentation will be conducted within 10 days of the receipt of the grievance. Within 15 days from the receipt of the grievance under Step 2 or conclusion of the oral presentation, whichever is later, the second-level supervisor or Office Director shall issue a written grievance decision.

- D. If the resolution at Step 2 is unsatisfactory, the Union may within ten (10) days allowing receipt of the decision at Step 2, or the date the decision was due, advise the Employer's Labor Relations Officer or other designated representative of their desire to submit the matter to an impartial arbitrator under Article 48.

#### Section 8. Grievances Initiated by the Parties

- A. Union initiated grievances shall be submitted to the UMTA Labor Relations Officer, or other such individual as may from time to time be designated, by the Employer.
- B. Management initiated grievances shall be submitted to the Union Vice-president, (Vice-president for UMTA), or other such individual as may from time to time be designated by the Union.
- C. (1) Within seven (7) days of the receipt of a grievance by either party, the representatives of the Employer and the Union shall meet and attempt to resolve the grievance.  
  
 (2) A written response from either the Employer or the Union, as appropriate, shall be provided to the aggrieved within fifteen (15) days after the initial meeting.  
  
 (3) If the grievance is not resolved, or if a mutually acceptable settlement is not reached, the grievance may be submitted to arbitration pursuant to Article 48.  
  
 (4) Nothing in this subsection shall preclude such additional meetings as may be mutually agreeable to the parties to explore the issues of or settlement of the grievance.

Section 9. The provisions of this Agreement shall be interpreted and applied in accordance with the Merit System Principles contained in Section 2301 of Title 5 USC.

## ARTICLE 48

ARBITRATIONSection 1. INVOKING ARBITRATION

If the Employer or the Union fail to settle any grievance processed under Article 47, Grievance Procedure, such grievance may be submitted to arbitration. Arbitration shall be invoked upon written request by either party within twenty-one (21) days after issuance of the final grievance decision or the date that such decision was due. Requests for arbitration by the Union shall be signed by the President, or Acting President and shall be either hand delivered or sent by certified mail to the Employer's designated representative. Requests for arbitration by the Employer shall be signed by Employer's designated representative and either hand delivered or sent by certified mail to the President.

Section 2. SELECTION OF AN ARBITRATOR

Within seven (7) days from the date of the receipt of the request for arbitration, the parties shall request a list of arbitrators from the Federal Mediation and Conciliation Service. The parties shall meet within seven (7) days after the receipt of such list to select an arbitrator. The Employer and the Union will each strike one arbitrator's name from the list and will then repeat this procedure until one name remains who shall be the duly selected arbitrator. The initial strike shall be determined by a toss of a coin.

Section 3. COST AND FEES

- A. All expenses incurred by the arbitrator will be shared equally by the parties.
- B. All expenses incurred by a witness who is not an employee of the Urban Mass Transportation Administration will be borne by the party calling that witness.

Section 4. LOCATION OF ARBITRATION HEARING

- A. The Employer will arrange for the hearing to be conducted in a room located in the Headquarters Building, Washington, D.C.
- B. The arbitrator will be requested to hold the hearing during regular business hours of the Urban Mass Transportation Administration. All unit members who would otherwise be in a duty status will be granted official time during that period of time in which they are serving as witnesses.

## Section 5. PREPARATION FOR HEARING

- A. Upon selection of an arbitrator in a particular case, the parties will communicate with the arbitrator and each other to select a mutually agreeable date for the arbitration hearing. The hearing will normally be scheduled within sixty (60) days after arbitration is invoked.
- B. Following selection of an arbitrator and his or her acceptance, the parties will prepare a joint letter submitting the matter in dispute to the arbitrator. The letter shall present the issue(s) upon which arbitration is sought, including questions of arbitrability, and the parties' positions regarding the issue(s). If a statement of the issue(s) cannot be agreed upon, each party shall prepare and submit to the arbitrator its own statement of the issue(s) and its positions(s). The submission letter(s), the grievance file (which is not a part of the employee's Official Personnel Folder), a copy of this Agreement, and/or applicable agency or government regulations, shall be forwarded to the arbitrator as soon as practicable after his or her selection. The grievance file shall consist of the written grievance and responses at each step and the notice invoking arbitration.

## Section 6. ARBITRABILITY

- A. Any issue(s) as to whether a matter complained of is a grievable or arbitrable subject shall be referred to an arbitrator for resolution, and the arbitrator's decision regarding the matter shall be final and binding, subject to an appeal to the Authority under 5 U.S.C. 7122.
- B. Issue(s) of grievability/arbitrability shall be submitted to the arbitrator as a separate issue(s) for resolution. The arbitrator may hear the evidence on the issue(s) of grievability/arbitrability as well as on the merits of the contested matter, and the arbitrator shall rule separately on each issue(s).

## Section 7. PROCEDURES AT HEARING

The arbitrator shall determine the procedures to be followed at the hearing, consistent with this Agreement. The arbitrator shall receive or exclude evidence, as appropriate, and will consider all relevant evidence submitted by the parties, including affidavits and give such weight as he/she deems appropriate to the evidence and to any objection made over the submission of the evidence. All documents which the parties wish to submit for consideration by the Arbitrator will be introduced at the hearing.

## Section 8. WITNESSES

- A. Both parties will make a good-faith effort to assist the Arbitrator to produce a complete record promptly and efficiently by:
  - 1. Agreeing to stipulate to evidence without the necessity of calling witnesses when there is no question of fact about the evidence; and
  - 2. Limiting examination and cross examination to relevant and material matters.
- B. The parties agree to exchange complete lists of prospective witnesses at least fifteen (15) days prior to the hearing. If either party objects to a witness for the other party, the matter shall be presented to the arbitrator at the hearing and the arbitrator will determine who shall testify.
- C. Each party shall have their respective witnesses promptly available to give testimony.

## Section 9. BURDEN OF PROOF

The grievant shall bear the burden of proving his or her case by a preponderance of the evidence, except in cases where a different statutory burden has been established, in which case the latter shall apply.

## Section 10. FINALITY OF AWARD

The arbitrator's award shall be binding on the parties. However, either party may file an exception to an award with the Federal Labor Relations Authority under 5 U.S.C. 7122 and procedures established by the Authority. Exceptions may not be filed on matters grieved under Section 3 of Article 47, Grievance Procedure; however, the aggrieved employee may request review of such matters by the appropriate statutory or judicial authority.

## Section 11. SUBMISSION OF DOCUMENTS

All documents filed with the arbitrator, including post-hearing briefs, if submitted, shall be simultaneously served on the other party.

## Section 12. WRITTEN AWARD

The arbitrator shall transmit the written award to the parties within thirty (30) days of the submission of any post-hearing briefs or the close of the hearing if no post-hearing briefs are submitted.

### Section 13. AUTHORITY OF THE ARBITRATOR

The arbitrator shall have no authority to change, alter, modify, delete, or add to the terms of this Agreement, subsequent memoranda of understanding and/or applicable policies and regulations. In the issuance of any award under this Article, the arbitrator shall be governed by:

- A. Existing and future laws;
- B. Government-wide rules or regulations, including the Federal Personnel Manual in existence at the time this Agreement or subsequent memoranda of agreement was executed and which are current at the time of arbitration;
- C. Future Government-wide regulations, including the Federal Personnel Manual, to the extent that they do not conflict with the provisions of this Agreement or subsequent memoranda of understanding; and
- D. Department of Transportation or Urban Mass Transportation Administration regulations in existence at the time of the execution of this Agreement, and such future regulations, to the extent that they do not conflict with the provisions of this Agreement or subsequent memoranda of understanding.

### Section 14. EXPEDITED ARBITRATION

The parties may mutually agree that the procedures set forth in this Article are too time consuming, formal, and costly for the nature of the dispute. In these instances, the parties shall conduct an expedited arbitration hearing in accord with the other provisions of this Article, but agree as follows:

- A. The hearing will be conducted within ten (10) working days after selection of an arbitrator.
- B. There will be no transcript and no posthearing briefs will be allowed.
- C. The arbitrator will announce his or her award within five (5) working days of the close of the hearing.

## ARTICLE 49

DISPUTE SETTLEMENT

The Parties shall encourage employees, Union representatives, supervisors and management officials to attempt good-faith settlement of disputes after grievance, appeal, charge or other action has been initiated, to the end that disputes be settled “out of court” and the need for continuation of the action be lessened or terminated.

## ARTICLE 50

EFFECTIVE DATE AND DURATION OF AGREEMENT

Section 1. This labor-management agreement is effective the day following ratification by members in the unit and approval by the President, Local 3313, American Federation of Government Employees, and the Administrator, Urban Mass Transportation Administration.

Section 2. This Agreement shall remain in effect for two years from its effective date and shall automatically renew itself from year-to-year thereafter unless either party shall notify the other party in writing at least 60 days but not more than 90 days prior to any anniversary date of its desire to modify, or amend this Agreement. Any notice of desire to modify or amend the Agreement must contain the party’s specific proposals for modifying or amending the Agreement.

Section 3. If either party gives notice to the other party in accordance with Section 2 to modify or amend the Agreement, then within 30 days from receipt of said notice, representatives of the Parties shall meet and commence negotiations. If negotiations are not completed by the expiration date of this Agreement, the Agreement shall be automatically extended until negotiations are completed and a new agreement is approved; or the impasse resolution provisions of 5 USC, 7119, have been exhausted; or the Union loses its representation rights, whichever occurs first.

In witness hereof this Agreement has been signed by the Parties hereto this the 7th day of July 1983.