Collective Bargaining Agreement

between the

United States International Trade Commission

and the

American Federation of Government Employees

June 2, 2016

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PREAMBLE

Section 1: General

A. The United States International Trade Commission (hereinafter referred to as the Employer) and Local 2211, American Federation of Government Employees (AFGE) AFL-CIO, (hereinafter referred to as the Union) (collectively referred to as Parties) agree that the public interest requires high standards of employee performance, and the continued development and implementation of modern and progressive work practices will facilitate improved employee performance and efficiency.

B. The Parties agree that the well-being of employees and efficient administration of the Government are benefited by providing employees an opportunity to participate in decisions which affect them through collective bargaining by their authorized representatives on policies and practices affecting conditions of their employment.

C. The Parties agree that the participation of employees in decisions which affect them should be improved through the maintenance of constructive and cooperative relationships between labor organizations and management officials.

D. Subject to law and the paramount requirements of public service, effective labor-management relations within the Federal service require a clear statement of the respective rights and obligations of labor organizations and agency management.

E. With the foregoing in mind, and in accordance with the provisions of chapter 71, title 5, United States Code ("U.S.C."), and other applicable laws, rules, regulations, and policies, the Parties enter into this agreement which shall constitute a collective bargaining agreement (Agreement) between the Employer and the Union.

Section 2: Structure of Agreement

The structure of this agreement is designed to clearly identify controlling laws and regulations and the bargain agreed to by the Parties.

A. Laws and Regulations

1) Where practicable, each Article contains a section identified as "Laws and Regulations" that provides context for the bargain and ease of reference for the Parties.

2) The "Laws and Regulations" sections are intended to assemble controlling legal principles from Congressional statutes, judicial decisions, and OPM regulations that cannot be changed by the Employer or the Union.

3) The Parties agree that these sections should be amended by the Parties expeditiously whenever necessary due to changes in the applicable "Laws or Regulations." See Article I: Duration and Modification of Agreement, Section 5A.

B. Agreement of the Parties

1) The remainder of the sections delineates discretionary decisions made by agreement between the Parties.

2) These sections are intended to provide guidance on the general agreement but are not designed to provide details on the implementation or procedures to be followed in every circumstance.

C. Implementation Details

1) The Parties agree that the details of implementation and the specific procedures are reserved to the Employer, at least insofar as those details are not inconsistent with the general agreement between the Parties.

2) The Employer agrees to provide the Union with no less than seven calendar days advance notice and an opportunity to comment, unless otherwise agreed to by both the Union and the Employer, whenever it proposes to change the implementation or procedures relevant to any bargained-for agreement.

D. Order of Precedence

In case of conflict, the order of precedence with regard to this Agreement is as follows:

1) Federal Laws
2) Federal Regulations
3) Provisions of the Agreement
4) Agency internal rules

When interpreting provisions of the CBA, interpretations that are consistent with laws and regulations shall be preferred.

Section 3: Definitions

The participants in this Agreement will be referred to throughout the Agreement in the following manner:

A. **Days** – refers to calendar days in all instances unless explicitly noted;

B. **Employee** – any member of Local 2211, American Federation of Government Employees (AFGE) AFL-CIO bargaining unit;

C. **Employer** – collective reference for all management officials;

D. **Parties** – collective reference to all participants in this agreement; and

E. **Union** – collective reference for all bargaining unit employees and representatives for Local 2211, American Federation of Government Employees (AFGE) AFL-CIO.

ARTICLE I: DURATION AND MODIFICATION OF AGREEMENT

Section 1: Duration

This Agreement will remain in full force and effect for five years from the date of the approval by the Employer and by the Union.

Section 2: Automatic Renewal

If neither the Employer nor the Union serves notice to renegotiate this Agreement no less than 60 calendar days before its expiration, it shall be automatically renewed for five year periods.

Section 3: Notice of Intent to Renegotiate

A. Either the Employer or the Union may give written notice to the other of the intent to renegotiate this Agreement no less than 60 calendar days prior to the expiration date for the purpose of renegotiating this Agreement. Such notice will include proposals for each Article to be renegotiated.

B. Negotiations will commence within 30 calendar days after receipt of such notice by either party to the other.

C. If a new agreement has not been reached by the Agreement expiration date, then this Agreement shall be extended until a new agreement is approved.

Section 4: Reopener (Unilateral Right to Bargain)

A. Both the Employer and the Union may, after the initial 12 month period, give written notice to the other party of its desire to reopen this Agreement.

B. Both the Employer and the Union are entitled to reopen the Agreement once during its five year duration and once during each five year renewal period.

C. Reopening shall be limited to no more than 10 existing sections of this Agreement.

Section 5: Amendments (Mutual Desire to Bargain)

A. Changes in Laws and Regulations

This Agreement shall be amended in a timely manner whenever the laws and regulations incorporated herein are amended.

B. Other Amendments

This Agreement may be amended at any time by mutual consent of both the Union and the Employer. Any amendments will remain in effect in accordance with the provisions of this Article.

Section 6: Totality of Agreement

A. This Agreement sets forth the entire agreement between the Union and the Employer with respect to the matters discussed herein and supersedes any and all prior representations or statements, oral or written, between the Union and the Employer pertaining to the subject matter hereof.

B. No other representations or statements shall be binding upon the Union and the Employer with respect to the subject matter of this Agreement unless contained herein or separately agreed to in writing by the Union and the Employer.

C. Any separate agreements between the Union and the Employer shall be appended to this Agreement.

ARTICLE II: DEFINITION OF UNIT

Section 1: Laws and Regulations

5 U.S.C. §7112(b) excludes the following employees from an appropriate bargaining unit:

(1) except as provided under section 7135(a)(2) of this title, any management official or supervisor (a management official means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency. 5 U.S.C. § 7103(a)(11));

(2) a confidential employee (a confidential employee means one who acts in a confidential capacity with respect to a management official or supervisor. 5 U.S.C. § 7103(a)(13));

(3) an employee engaged in personnel work in other than a purely clerical capacity;

(4) an employee engaged in administering the provisions of this chapter;

(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

(6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

Section 2: Definition of Unit

A. The Employer recognizes Local 2211, American Federation of Government Employees (AFGE), AFL-CIO, as the exclusive representative of all employees in the following described unit: Professional and non-professional employees of the Employer excluding the employees described in Section 1 above, temporary employees with appointments of less than four (4) months, and contractors.

B. All positions in the Management and Program Analysis Division in the Office of Administrative Services are excluded from the bargaining unit under 5 U.S.C. § 7112(b)(2), (3), and (4).

C. All positions in the Office of Human Resources are excluded from the bargaining unit under 5 U.S.C. § 7112(b)(3).

D. All positions in the Office of Equal Employment Opportunity (OEEO) are excluded from the bargaining unit under 5 U.S.C. § 7112(b)(3) and (4).

E. All positions in the Cybersecurity Division of the Office of the Chief Information Officer are excluded from the bargaining unit under 5 U.S.C. § 7112(b)(6).

F. All positions in the Security Division of the Office of Security and Support Services are excluded from the bargaining unit under 5 U.S.C. § 7112(b)(6).

G. Bargaining unit status is determined by the position each employee currently occupies.

1) Employer will determine the bargaining unit status of new positions in consultation with the Union at the time the position is created.

2) A bargaining unit member detailed to a non-bargaining unit position is excluded from the bargaining unit for the duration of the detail.

3) A temporary detail to a non-bargaining unit position shall not prejudice any action that was brought by that employee under this Agreement while a member of the bargaining unit.

ARTICLE III: EMPLOYEE RIGHTS

Section 1: Laws and Regulations

A. General

The Employer agrees to respect the rights granted each employee under 5 U.S.C., Chapter 71, to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and to be protected in the exercise of such rights. Except as otherwise provided in 5 U.S.C., Chapter 71, such rights include the right –

1) To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and

2) To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees.

B. Right to Self-Representation

1) Grievance

a. Each employee shall have the right to self-representation in a grievance or to representation by the Union. 5 U.S.C. § 7121(b)(1)(C)(ii) and 5 U.S.C. § 7114(a)(5)(A).

b. Although not required by law or regulation the Parties agree that when an employee chooses to present a grievance on his/her own behalf, then the employee must sign a statement absolving the Union from the responsibility to represent the employee in the grievance and from any financial obligations incurred by the employee.

2) Equal Employment Opportunity Complaints

Employees shall have the right to be accompanied, represented, and advised by a representative of their choice at any stage of the processing of a complaint. 5 C.F.R. § 1614.605(a). Employees may select a Union representative as the "representative of their choice."

C. Right to Request Union Representation at Investigatory Interviews

1) Investigatory Interview

An investigatory interview occurs when a supervisor or other representative of the Employer questions an employee to obtain information which the employee reasonably believes could be used as the basis for disciplinary action.

a. Employee Right to Representation

i. Statutory Right to Request Representation

1. Each bargaining unit employee has the right to request Union representation at any examination of an employee by a supervisor or other representative of the Employer in connection with an investigation (investigatory interview) if the employee reasonably believes that the examination may result in disciplinary action against the employee. 5 U.S.C. § 7114(a)(2)(B).

2. The employee may request Union representation before or at any time during the investigatory interview.

ii. Agreed-Upon Right to Notice of Statutory Right to Request Representation

1. The Parties agree that:

a) When a supervisor or other representative of the Employer has reason to believe that disciplinary or adverse action against the employee may result from the investigatory interview of that employee, the supervisor or other representative of the Employer shall advise the employee of his/her right to the presence of a Union representative; and

b) Some discussions may become investigatory interviews during the course of discussion. At the time the supervisor or other representative of the Employer recognizes that disciplinary or adverse action against the employee may result from discussions with that employee, the supervisor or other representative of the Employer shall advise the employee of his/her right to the presence of a Union representative.

2. The Parties further agree that failure of the supervisor or other representative of the Employer to give such advice shall not be grounds for a grievance or procedural error in the case of any disciplinary or adverse action against the employee.

b. Granting or Denying a Request for Union Representation

Once an employee requests Union representation, the supervisor or other representative of the Employer may:

i. grant the request and delay questioning until the Union representative arrives;

ii. deny the request and end the interview immediately; or

iii. give the employee the option of either continuing the interview without Union representation or ending the interview.

c. Unavailability of Union Representative

i. If no Union representative is available at the time of the investigatory interview, and the employee does not wish to proceed with the interview, the supervisor or other representative of the Employer will postpone the investigatory interview until a Union representative becomes available.

ii. If no Union representative becomes available within one business day, through no fault of the Employer, then the investigatory interview may proceed without a Union representative.

2) Nature of Union Representation

a. Once a Union representative arrives at the investigatory interview, the following guidelines will be observed:

i. The supervisor or other representative of the Employer must inform the Union representative of the subject matter of the interview, such as the type of misconduct being investigated.

ii. The Union representative will be permitted a private meeting with the employee before questioning begins or is resumed.

iii. The Union representative may speak during the interview, but may not disrupt, delay, or terminate the interview.

iv. The Union representative may object to a confusing question and may request that the question be clarified so that the employee understands what is being asked.

v. The Union representative may advise the employee not to answer questions that the representative reasonably believes are abusive, misleading, badgering, or harassing.

vi. When the questioning ends, the Union representative may provide information to justify the conduct in question.

3) Pursuant to 5 U.S.C. § 7114(a)(3), the Employer will provide annual notification of the rights described in this subsection to bargaining unit employees.

4) For more on the Union's right to participation see Article IV: Union Rights, Section 2.

D. Personal Information

Employees have the right, upon request, to review personal information contained in the Employer's system of records under 5 U.S.C. § 552a(d)(1).

E. Official Time

Employees shall be granted a reasonable amount of official time to prepare and present grievances and statutory appeals under 5 U.S.C. Chapters 43 and 71.

Section 2: Non-Investigatory Interviews and Other Meetings

A. While the employee's right to a representative is limited to the situations in Section 1(C) above, employees may request the participation of a Union representative in situations where it might facilitate communication. Supervisors have the discretion to grant these requests.

B. Likewise, supervisors may also request the participation of another representative of the Employer in situations where it might facilitate communication.

C. Non-investigatory situations where a Union representative and an additional representative might facilitate communication may include:

1) Discussions about performance, including notifying an employee of a determination of unacceptable level of competence or performance (withholding of a within grade increase or the need for a Performance Improvement Plan (PIP));

2) Discussions of actions /behavior of a bargaining unit member that could lead to a disciplinary or adverse action if not corrected;

3) Discussions about issues involving physical security (e.g., in the garage, offices, etc.);

4) Discussions about other issues that may result in a change of working conditions (e.g., transfers, details, addition of duties, etc.).

Section 3: Facilities and Parking

A. Lunchroom Facilities

1) The Employer will provide lunchroom facilities containing a sink, microwave, ice machine, TV, and tables and chairs to accommodate at least 20 USITC employees and contractors. Additional tables and chairs will be made available if space permits. The Employer will provide reasonable notice to the Union of any proposed change to the lunchroom facilities.

2) The lunchroom will not be open to the public, but will be reserved for the use of employees and contractors only.

B. Shower and Locker Facilities

1) The Employer will provide shower and locker facilities for the use of USITC employees and contractors only.

2) The Employer will provide separate facilities for men and women with at least 20 lockers in each.

3) Lockers for Daily Use

a. The Employer will reserve at least five lockers in each locker room for daily use.

b. No employee shall use these lockers for the permanent storage of his/her belongings.

c. Personal locks can be placed on these lockers only during the time employees are storing belongings while exercising.

d. No personal locks shall remain on these lockers overnight.

4) Locker Assignment

a. The lockers that are not reserved for daily use will be assigned in accordance with procedures established by management that will include reasonable notice and an opportunity to submit an application.

b. Locks can be placed on these lockers for the duration of the assignment.

5) The posting of any notices or any type of posters, labels or stickers within the shower and locker facility is forbidden unless approved by the Employer.

C. Parking for Automobiles and Bicycles

1) The Employer will provide and subsidize employee parking in the building to the extent permitted by law, budgetary constraints, and availability consistent with the Employer's official parking policy.

2) The percentage of the parking subsidy, if any, will be reviewed annually during the budget formulation process.

3) The Employer will provide the Union notice and an opportunity to comment on any agency-recommended changes to the parking program.

4) An announcement concerning the application for parking spaces will be sent to all employees through the agency's electronic mail system.

5) The Employer agrees to provide bicycle racks for at least 20 bicycles. The bicycle rack will be located in the parking garage, if possible.

D. Notice of Changes to Facilities and Parking

1) Facilities and parking under this Agreement may be withdrawn by the Employer should the mission requirements so dictate.

2) Two weeks advance notice should be given if such withdrawal becomes necessary.

ARTICLE IV: UNION RIGHTS

Section1: Laws and Regulations

A. Pursuant to 5 U.S.C. § 7111(a), the Employer shall accord exclusive recognition to the AFGE. This includes officials and staff members from the National Office, and duly elected officers of Local 2211, AFGE.

B. Representatives of the Union "shall be given the opportunity to be represented at

1) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or 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 agency 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." 5 U.S.C. § 7114(a)(2)(B).

C. See Section 2(E) below for details on Union representation under (B)(2) of this Section.

D. See also Article III: Employee Rights, Section 1(B) & (C) for corresponding employee rights.

E. Internal union activities shall be performed when the employee is in a non-duty status. 5 U.S.C. § 7131(b). Except as described in Section 4, internal union activities include activities such as union meetings, solicitation for membership, election of Union officials, and collection of dues.

F. The Employer will withhold dues in accordance with 5 U.S.C. § 7115. See Section 6 below.

Section 2: Union Representation

A. Union Stewards

1) The Employer recognizes the right of the Union to determine the number of stewards (no more than eight) and identify, in writing, the individual stewards.

2) Stewards may perform their legitimate representational duties on official time.

B. Union representatives may distribute literature to bargaining unit employees during non-duty hours.

C. Union representatives meeting with unit employee(s) shall notify the relevant supervisor(s) upon entering the work area to conduct union business.

D. Supervisors arranging meetings requiring the presence of a Union representative shall provide adequate notice of that meeting so that the Union can make arrangements to provide Union representation at the meeting.

E. Investigatory Interviews

1) Definition

An investigatory interview occurs when a supervisor or other representative of the Employer questions an employee to obtain information which the employee reasonably believes could be used as the basis for disciplinary action.

2) Union Right to be Represented

The Union shall be given the opportunity to be represented at investigatory interviews at the request of a bargaining unit employee in accordance with Section 1(B)(2) above. 5 U.S.C. § 7114(a)(2)(B).

3) Procedures

See Article III: Employee Rights, Section 1(C) 1) for procedures related to an employee request for Union representation during an investigatory interview.

Section 3: Release to Perform Representational Duties

A. Requesting Release to Perform Representational Duties

1) Union representatives must obtain advance permission of their first-line supervisors to leave their assigned work stations to conduct authorized representational duties.

2) In requesting release, the Union representative will inform the supervisor of the estimated duration of official time required to perform the representational duties.

B. Granting Release to Perform Representational Duties

1) Subject to the provisions of this Article, and if work load conditions permit, the Union representative shall be released unless workload exigencies preclude release.

2) If release cannot be granted immediately, the supervisor or other representative of the Employer shall advise the Union representative when release would be appropriate.

3) If the Union representative is unavailable due to workload or on leave and no other Union representative is available or familiar with the case, the Union will promptly notify the relevant supervisor, who will appropriately extend any applicable time limits under this Agreement.

Section 4: Use of Official Time

A. The Employer shall grant Union representatives a reasonable amount of official time to carry out their representational duties. In determining what constitutes a "reasonable amount of time," the Employer shall consider both (1) the Union's needs to adequately represent the members of the unit, and (2) the Employer's need to have assigned work performed in timely fashion.

B. The Union shall be allowed up to 200 hours of official time annually for training its representatives in labor-management relations. This block of training time may be used among Union representatives for training purposes as the Union chooses.

C. A Union representative will be allowed official time during new employee orientation to explain the Union and its relationship with the Employer and distribute materials.

D. Union representatives will report official time used in connection with their representational duties in accordance with the procedures of the Employer's activity reporting system.

E. If a Union representative anticipates using more than 10 hours of official time per bi-weekly pay period to perform representational duties, that representative should coordinate the representation with the appropriate supervisor to ensure minimum disruption to USITC business.

F. No official time shall be allowed for the performance of internal Union business.

Section 5: Use of Official Facilities

A. The Employer will provide reasonable office space, network connectivity, and furniture for the use of the Union.

B. The Employer will provide reasonable access to conference facilities for official Union meetings to be held during the non-duty hours of the employees involved. The Union will schedule the space using standard USITC scheduling procedures.

C. The Employer will provide one non-lockable bulletin board in the lunchroom and one in every galley for exclusive Union use.

D. The Union is responsible for the accuracy and lawfulness of posted materials and for insuring that they contain no inflammatory content. The Employer reserves the right to remove any posted materials not in accordance with the criteria of this section.

Section 6: Dues Withholding

A. The Employer will withhold dues from the pay of all employees who authorize such withholdings on the relevant form and who have earnings sufficient to cover the amount of the allotment.

B. The Employer will terminate dues withholding for all employees who authorize the termination of such withholdings on the relevant form.

C. In addition, an employee's withholding of Union dues shall be terminated when:

1) The employee leaves the unit as a result of any type of separation or transfer (excluding temporary details),

2) Upon loss of exclusive recognition by the Union,

3) Upon suspension or termination of the Agreement by appropriate higher authority, or

4) When the employee has been suspended or expelled from the Union.

Section 7: Information Provided to the Union

A. Dues Withheld and Names of the Dues Contributing Bargaining Unit Employees

The Employer will provide the Union with the dues withheld and a listing of the names of the contributing bargaining unit employees each pay period.

B. Bargaining Unit Membership

On a monthly basis, the Employer will provide the Union with a current list of the names, position titles, grades, and divisional locations of employees in the bargaining unit.

C. Quality Step Increase Recipients

On an annual basis, the Employer will provide the Union with a list of quality step increases (QSI) by name, title and grade of all unit QSI recipients for the past 12 months.

D. Union Audits of Records Related to Screening and Ranking Applicants for Bargaining Unit Positions

1) To assure all employees included in the bargaining unit of fair and impartial consideration of candidates for merit promotion, the Parties agree that the Employer will permit the president or unit vice-president of the Union or his/her designee to audit the records used as a basis for screening and ranking applicants post-selection for bargaining unit positions.

2) The records provided to the Union for audit shall not include records for which disclosure would constitute a clearly unwarranted invasion of personal privacy.

G. Availability of Agreement

The Employer agrees to post this Agreement and any amendments thereto to the Employer's intranet site.

ARTICLE V: MANAGEMENT RIGHTS

Section 1: Laws and Regulations

Pursuant to 5 U.S.C. § 7106 (a), management officials of the agency have the authority to manage the affairs of the agency, including the authority--

A. To determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

B. In accordance with applicable laws--

1) To hire, assign, direct, lay off, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

2) To assign work, to make determinations with respect to contracting out, and to determine the personnel by whom agency operations shall be conducted;

3) With respect to filling positions, to make selections for appointments from—

   a. Among properly ranked and certified candidates for promotion; or

   b. Any other appropriate source; and

4) To take whatever actions may be necessary to carry out the mission of the agency during emergencies.

ARTICLE VI: LABOR-MANAGEMENT COOPERATION

Section 1: Laws and Regulations

Section 3(a) of Executive Order 13522 (2009) requires the head of each executive department or agency to establish labor-management forums by creating or adapting labor-management committees or councils to help identify problems and propose solutions to better serve the public and agency missions.

Section 2: Willingness to Consult, Neutrality, and Conduct

A. Willingness to Consult

The Employer and the Union will advise their officials and representatives of their obligation to demonstrate an affirmative willingness to consult.

B. Neutrality

The Employer will advise its officials and representatives of their responsibility for maintaining neutrality on questions of Union membership.

C. Conduct

1) Representatives of the Employer and the Union, as well as employees, will conduct themselves consistent with USITC Directive 4503.0, Employee Responsibilities and Conduct; Ethics Counseling Service. Further, they will treat each other and members of the public in a professional and business-like manner, with courtesy, consideration, and respect.

2) No employee, supervisor, management official, or union representative should engage in or be subjected to harmful treatment or verbal or physical abuse on the job. This includes the expectation that no individual would be addressed with obscenities or be called derogatory names, either in person, by telephone, voicemail, e-mail, or other communications media.

3) Representatives of the Employer and the Union will refrain from engaging in conduct or questioning that is abusive, misleading, badgering, or harassing.

Section 3: Labor-Management Partnership Council

A. The Employer and the Union agree to maintain a joint Labor-Management Partnership Council (LMPC).

B. The LMPC shall issue a charter addressing membership and operating procedures.

C. The LMPC will discuss matters of mutual interest and concern. The purpose of these meetings is to attempt to avoid conditions that result in grievances and misunderstandings. It is understood that individual grievances will not be discussed during LMPC meetings.

D. The LMPC will also function as the USITC's Health and Safety Committee. (See Article VIII: Health and Safety.)

ARTICLE VII: EQUAL EMPLOYMENT OPPORTUNITY

Section 1: Laws and Regulations

A. The Employer shall conduct all employment practices consistent with applicable equal employment opportunity (EEO) laws and regulations, including Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, Title I of the Americans with Disabilities Act of 1990, and Sections 501 and 505 of the Rehabilitation Act of 1973.

B. Pre-complaint counseling of EEO concerns is confidential and will not be disclosed by the agency's EEO office to management or the Union absent the consent of the counseled employee. 29 C.F.R. § 1614.105(g).

C. EEO claims may be raised through the EEO statutory procedure or through the negotiated grievance procedure under Article XVII: Grievance Procedure, but not both. 29 CFR § 1614.301(a).

D. EEO staff will provide employees notice of and access to the annual report required by Equal Employment Opportunity Commission Management Directive 715.

Section 2: Non-Discrimination and Promotion of Diversity

A. The Employer affirms its policy that the conduct of all employment practices including selection, training and promotion, shall in no way be influenced by arbitrary considerations of race, color, religion, sex, age, national origin, physical handicap, or lawful political affiliation consistent with all applicable laws and regulations.

B. The Employer strives for an integrated, diversified work force in which opportunities for employment and advancement are based on individual qualifications, performance, and contributions.

C. The Employer recognizes the value of equality of employment opportunity as an operating principle and as a vital link to mission accomplishment.

Section 3: Union and Employer Collaboration on Labor Relations Issues that May Have EEO Implications

A. The Union and the Employer agree that workplace disputes should be resolved at the lowest possible level with the minimum possible disruption to the USITC.

B. The Union and the Employer agree to consult on a regular basis and have open lines of communication in order to facilitate the prompt resolution of labor relations issues that may have EEO implications.

C. The Union and the Employer should consult with the agency's EEO staff on any labor relations issues that may have EEO implications. The Labor-Management Partnership Council provides a convenient monthly forum for Management, the Union, and EEO staff to discuss these issues when they arise.

D. The Union and the Employer understand that employees or management may consult the agency's EEO staff to facilitate communication on workplace issues to resolve them before they escalate into a complaint or grievance.

E. The agency's EEO staff will inform employees and supervisors seeking assistance or advice of the formal avenues they may pursue in order to resolve labor relations disputes should informal discussions fail to resolve the issue. Specifically, the agency's EEO office will inform employees of any applicable time deadlines regarding potential EEO complaints and will refer them to their Union representative for information on time deadlines related to the collective bargaining agreement (CBA) grievance procedure.

F. The agency's EEO staff will not provide advice about grievances or potential grievances, including those related to performance issues, or employee rights under the CBA.

Section 4: Notice to Employees Seeking Pre-Complaint Counseling

A. The agency's EEO staff will inform employees seeking pre-complaint counseling of:

1) The employee's confidentiality rights under 29 C.F.R. § 1614.105(g);

2) The employee's right to a representative of their choice, including the option of representation by a Union official; and

3) The employee's potential options for resolution of their issues. This may include pursuing a grievance under the CBA or pursuing an EEO complaint, but not both.

B. The agency's EEO staff will not opine on the merits of a potential grievance but will suggest that any employee who is considering a grievance consult with their Union representative.

Section 5: Union Representation and Notification

A. The Union is the exclusive representative for the bargaining unit as a whole, although individual employees may select their own representative outside the Union in a particular matter. As such, with the written permission of the complainant, the Employer agrees that

the agency's EEO staff will consult with the Union regarding implementation of remedial or corrective action to be taken as a result of formal resolutions of EEO complaints.

B. The Parties agree that corrective or remedial actions should be consistent with the provisions of this Agreement absent valid business reasons to do otherwise.

Section 6: Selection Qualifications for EEO Counselors

A. EEO Counselors shall be selected without regard to race, color, sex, religion, national origin, age, marital status, political affiliation, disability, or Union membership.

B. Nomination for prospective counselors may be submitted by the Union, employees, or other interested persons or organizations.

C. Union membership, or lack thereof, shall not provide a basis for nomination or failure to nominate an employee.

ARTICLE VIII: HEALTH AND SAFETY

Section 1: Laws and Regulations

A. The Employer will maintain an Occupational Safety and Health Program which is consistent with the standards promulgated under Sections 6 and 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 655, 668), Executive Order 12196, 29 C.F.R. § 1960, and other applicable laws, executive orders and regulations. In particular, the Employer will provide a place of employment which is free from recognized hazards that are likely to cause death or serious physical harm.

B. Consistent with Executive Order 12196 and Basic Program Elements for Federal Employee Occupational Safety and Health (29 C.F.R. 1960), the Employer will provide appropriate safety and health training for officials responsible for conducting safety and health inspections, and all members of the Safety and Health Committee and other unit employees as appropriate.

C. Under provisions of 29 C.F.R. 1960, the employer will maintain Occupational Safety and Health Records. Copies of these will be made available upon request to the union for review.

D. Consistent with section 1-201(h) of Executive Order 12196, Employer shall "[a]ssure response to employee reports of hazardous conditions and require inspections within twenty-four hours for imminent dangers, three working days for potential serious conditions, and twenty working days for other conditions. Assure the right to anonymity of those making the reports."

E. Consistent with section 1-201(c) of Executive Order 12196 the Chairman shall designate a Safety and Health Officer.

F. Consistent with section 1-201(f) of Executive Order 12196 Employer shall establish procedures to assure that no employee is subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthy working condition, or other participation in an occupational safety and health program.

Section 2: Safety and Health Activities

A. The Labor-Management Partnership Council (LMPC) will function as the USITC's oversight entity for safety and health activities. (See Article VI: Labor-Management Cooperation.)

B. The LMPC shall perform the following duties related to safety and health:

1) Monitor and assist the Occupational Safety and Health Program and make recommendations to the official in charge of the operation of the program.

2) Monitor findings and reports of workplace inspections to insure that appropriate corrective measures are implemented.

3) Participate in inspection of the establishment when the committee deems such activity is necessary for monitoring inspection procedures.

4) Review plans for abating hazards.

5) Review responses of reports concerned with allegations of hazardous conditions, alleged safety and health program deficiencies, and allegations of reprisal. If half the members of record on the Committee are not substantially satisfied with the response they may request an appropriate inspection by OSHA.

6) Review procedures for handling safety and health suggestions and recommendations from employees.

7) Designate representatives from management and labor to:

    a. Perform annual inspections of all areas and operations of each workplace, including office operations; and

    b. Conduct more frequent inspections, including unannounced inspections and follow-up inspections to ensure the identification and abatement of hazardous conditions, in all workplaces where there is an increased risk of accident, injury, or illness due to the nature of the work performed.

Section 3: General Conditions

A. In accordance with applicable Federal standards, management will provide and maintain adequate ventilation, personal security, heating, and cooling in all work areas, and provide potable drinking water free of harmful levels of contaminants in accessible locations for all employees.

B. Management will provide the LMPC with the most recent test results related to air and drinking water quality upon request.

Section 4: Reporting Unhealthful or Unsafe Working Conditions

A. When an employee or group of employees during the course of performing official duties reasonably believe they are being required to work under conditions which are unsafe or unhealthful, the employee(s) shall cease the activity and notify the nearest available

supervisor of the alleged hazard who shall in turn notify the agency Safety and Health Officer or his/her designee and the appropriate Union steward.

B. The Safety and Health Officer or designee will make a determination as to whether work may proceed and shall notify the supervisor and Union steward.

C. Management shall promptly investigate complaints of unsafe or unhealthful conditions. When an unsafe or unhealthful condition is found to exist, management shall take necessary action to abate such condition.

D. If in disagreement with the adequacy of management's abatement action, the Union may request an appropriate inspection by a GSA Schedule contractor.

E. A copy of the GSA Schedule contractor's inspection results shall be sent to the Union and the LMPC.

Section 5: Unaccompanied Work During Non-Duty Hours

To the maximum extent feasible, no employee shall be required to work unaccompanied during non-duty hours.

Section 6: First Aid Kits

The Employer will maintain and publicize the location of first aid kits to meet the needs of employees in case of minor accidents.

Section 7: Health Clinic Access

A. The Employer agrees to provide access to a nearby health clinic.

B. In addition to the other regular medical services provided, the clinic shall provide eye screening of any employee who requests it.

C. The Employer shall issue an annual notice reminding employees of the availability of the health clinic's eye screening.

D. Any employee using the clinic during their regular duty schedule must record that time as sick leave.

Section 8: Safety and Health Inspections

A. The USITC's Safety and Health Official will perform scheduled safety and health inspections or surveys consistent with the USITC's Occupational Safety and Health Program.

B. When an unscheduled worksite inspection is conducted by the Employer's safety personnel, the Union committee representatives will be given an opportunity to accompany the inspector.

Section 9: Notification in the Event of Serious Injury or Death

In the event of a serious on-the-job injury or death, Employer will notify the appropriate Union steward of the name of the employee involved.

ARTICLE IX: HOURS OF WORK

Section 1: Laws and Regulations

The basic legal requirements for Hours of Work are set forth in: 5.U.S.C. Chapter 61-Hours of Work and Chapter 63-Leave; 5 CFR Part 610-Hours of Duty and Part 630-Absence and Leave; and USITC Directive 4400.1, Attendance and Leave.

Section 2: Basic Administrative Workweek, Basic Work Requirement, and Core Hours

A. Basic Administrative Workweek

The Employer's basic administrative workweek is Monday through Friday. The official USITC hours commence at 8:45 a.m. and end at 5:15 p. m., which includes an authorized unpaid lunch period of 30 minutes. (5 U.S.C. § 6101).

B. Basic Work Requirement

The basic work requirement is the number of hours (excluding overtime hours) employees are required to work or otherwise account for by sick or annual leave, leave without pay, compensatory time, credit hours, excused absence, or holidays. 5 U.S.C. § 6121(3). Full-time employees have a basic work requirement of 80 hours in a biweekly pay period. 5 U.S.C. § 6101(a)(2)(A).

C. Core Hours

"Core Hours" are the time periods during the regularly-scheduled workday that all employees are required by the agency to work. The USITC's core hours are 9:30 a.m. to 2:30 p.m. All work schedules must include USITC core hours.

Section 3: Alternate Work Schedules

A. General

The USITC authorized employees to elect flexible and compressed work schedules in USITC Directive 4400.1, Attendance and Leave, USITC Administrative Order 03-08, Implementation of Flexible and Compressed Work Schedules, and Administrative Announcement FY-03-11, Implementation of Flexible and Compressed Work Schedules.

Employees may work flexible schedules with supervisor approval provided that the schedules do not impair the function of their work units.

Supervisors have the discretion to approve a request for a variance from an employee's established schedule on any particular day, which may result in absence during the established core hours, as long as the employee accounts for the required number of work hours for that day. Accordingly, employees may elect to work the following alternate work schedules with supervisory approval:

1) Flexible Work Schedules

    a. Flexitour Schedule

    b. Gliding Schedule

    c. Maxiflex Schedule

    d. First – 40 Schedule for Special Circumstances

2) Compressed Work Schedules

    a. 5-4/9 Schedule

    b. 4-4/10 Schedule

B. Earning and Use of Credit Hours

Credit Hours may only be earned and used by employees on flexible work schedules. Procedures for the earning and use of credit hours are set forth in section 6(d)(9) of USITC Directive 4400.1, Attendance and Leave.

C. Procedures for Alternate Work Schedules

Policies and procedures for establishing an alternate work schedule are set forth in section 6(d)(1) & (2) of USITC Directive 4400.1, Attendance and Leave.

D. Adjusting an Alternate Work Schedule

Policies and procedures for adjusting an alternate work schedule are set forth in section 6(d)(3) of USITC Directive 4400.1, Attendance and Leave.

E. Training, Travel, Holidays, and Excused Absences

1) Policies and procedures for time spent in training are set forth in USITC Directive 4204, Career Development, and section 6(d)(4) of USITC Directive 4400.1, Attendance and Leave (for AWS).

2) Policies and procedures for holidays are set forth in 5 C.F.R. Part 610, Subpart B, and section 6(d)(6) & (7) of USITC Directive 4400.1, Attendance and Leave (for AWS).

3) Policies and procedures for excused absences are set forth in section 12 of USITC Directive 4400.1, Attendance and Leave, and section 6(d)(8) of the same Directive (for AWS).

F. Leave

Policies and procedures for leave are set forth in USITC Directive 4400.1, Attendance and Leave. Policies and procedures for leave are not affected by AWS.

Section 4: HVAC Services and Pay Differentials

A. Employees' regular work schedules should not generate extra cost to the Employer, such as extra HVAC costs or pay differentials.

B. HVAC service hours are established by contract with the landlord. Supervisors may require employees to work hours outside their regular work schedule but should request HVAC services consistent with established policies.

C. Supervisors may require employees to work hours outside their regular work schedule that generate pay differentials but must do so consistent with established policies for overtime or night time pay.

Section 5: Abuses

Abuses of any of the requirements of this Section are subject to appropriate disciplinary action. Such abuses include falsifying time accounting records to reflect a greater number of hours than actually worked; excessively long lunch periods without appropriate time accounting; frequent instances of documented tardiness and absences from the worksite without prior approval.

Section 6: Use of Electronic Building and Computer Access Records

A. Electronic building and computer access records shall not be used by employees or management to collect, verify or amend official time records or to make determinations of time and attendance abuse for employees on fixed schedules.

B. This section does not apply to employees on flexible work schedules.

C. This section does not limit the use of such records for other purposes, such as security.

ARTICLE X: OVERTIME

Section 1: Laws and Regulations

Employees on officially ordered or approved overtime will be compensated in accordance with applicable laws and regulations according to premium pay provisions of 5 U.S.C. Chapter 55; Fair Labor Standards Act (FLSA) amendments of 1974 (PL 93-259); and 5 C.F.R. Parts 532, 550, and 551.

Section 2: Categories of Overtime

For the purposes of this Agreement, overtime includes paid overtime and compensatory overtime.

Section 3: Overtime Policies

The Employer agrees to:

A. Endeavor to fill work requirements by first requesting voluntary overtime from eligible employees before requiring compulsory overtime,

B. Distribute overtime work as equitably as possible, and

C. Release an employee from required overtime when, in the judgment of the supervisor, the health or efficiency of the employee may be impaired or personal circumstances make it impossible for the employee to perform and a qualified replacement is available.

ARTICLE XI: TELEWORK

Section 1: Laws and Regulations

The initial legislative mandate for telework was established in 2000 (§ 359 of Public Law 106-346). Further legislation followed in 2004 (Public Law 108-199, division B, § 627) and 2005 (Public Law 108-447, Division B, § 622). The most recent legislation was passed in 2010 (Public Law 111-292), the Telework Enhancement Act of 2010 (Act), 5 U.S.C. Chapter 65:

- requires each Federal agency to establish a policy under which eligible employees can telework and establish telework agreements with employees
- mandates that each agency determine the eligibility for all of its employees to participate in telework
- requires that each agency notify all of its employees of their eligibility to telework
- directs agencies to designate a Telework Managing Officer (TMO)
- requires agencies to provide interactive telework training to eligible employees and their managers and requires employees to complete the training prior to signing a telework agreement
- outlines responsibilities and expectations for agencies with regard to policy, policy guidance and support; reporting and monitoring of the progress of telework in the various agencies

Section 2: Definition of Telework

The terms "telework" and "teleworking" refer to a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee's position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work, including the employee's home or other approved telework worksite.

Section 3: USITC Telework Procedures

A. The Employer and the Union agree to follow Office of Personnel Management (OPM) guidance in establishing and implementing the USITC Telework Program.

B. Both Parties agree that it is the Employer's responsibility, in conjunction with consultation from the Union, to develop and implement the details of the USITC Telework Program by maintaining, and updating as necessary, detailed procedures in a handbook.

C. The Chairman shall designate a senior official to be the agency TMO who will be responsible for the handbook and its implementation.

Section 4: Types of Telework

A. Generally there are two types of telework;

1) Regular (routine) telework in which telework occurs as part of an ongoing, regular schedule, and

2) Episodic (situational) telework that is approved on a case-by-case basis, where the hours worked were not part of a previously approved, ongoing and regular telework schedule.

B. The Employer and the Union agree that each type of telework shall be generally available to staff consistent with business requirements, and that requests for either type of telework shall be considered in light of such requirements.

Section 5: Basic Principles

A. The Parties agree that telework is not an employee right; it is a privilege. Telework is primarily an arrangement established to facilitate the accomplishment of work; it is not a substitute for dependent care. While employees and the Employer alike enjoy positive outcomes resulting from telework, the Employer retains both the discretion and the obligation to determine employee eligibility for telework subject to business-related, operational needs and the limitations of telework law.

B. The Parties agree that teleworkers and non-teleworkers shall be treated the same for purposes of appraisals of job performance, training, rewarding, reassigning, promoting, reducing in grade, retaining and removing employees. Similarly, all employees are expected to complete their work in a timely manner, regardless of where they are working.

C. Non-teleworking employees should not have to adjust their schedules or take on additional duties to accommodate the desire of other employees to telework.

D. If the nature of the work requires the employee to be at the office, then the employee must adjust his/her schedule to meet the work requirement.

Section 6: Emergencies and Telework

A. Telework is voluntary under normal operational circumstances. However, in cases of an emergency or continuity of operations following an emergency, the Employer may require employees to telework.

B. In order to be prepared for an emergency, all employees should execute at least an episodic telework agreement, even if telework is not planned for other than emergency use.

C. The Employer shall determine when some or all employees must telework during emergencies or continuity of operations scenarios.

Section 7: Unscheduled Telework Days/Government Closures

A. "Telework Ready" and "Not Telework Ready" Designations

1) Definitions

a. "Telework ready" employees are employees who are capable of effectively teleworking with no advance notice.

b. The "telework ready" designation is voluntary. An employee must agree with the supervisor to be designated as "telework ready."

B. Implications of Telework Ready Designation

1) "Telework Ready"

a. Employees who are deemed to be "telework ready"

i. MAY telework when OPM announces that the Federal government is open with the option of unscheduled telework/unscheduled leave if their request is approved by their supervisor.

ii. MUST telework or take leave when:

1. OPM announces a government closure but requires "telework ready" employees to telework, or

2. When the USITC announces an agency closure but requires "telework ready" employees to telework.

b. If a "telework ready" employee does not telework on an unscheduled telework day then the employee must request unscheduled leave or report to the office.

c. If a "telework ready" employee does not telework on a government or agency closure day then the employee must request unscheduled leave. Exception for disruptions in power or other unusual situation will be made by the employee's supervisor on a case by case basis.

2) "Not Telework Ready"

a. Employees who are deemed to be "not telework ready"

i. MUST report to the office or request unscheduled leave when OPM announces that the Federal government is open with the option of unscheduled telework/unscheduled leave.

ii. Will be placed on administrative leave when:

1. OPM announces a government closure but requires "telework ready" employees to telework, or

2. When the USITC announces an agency closure but requires "telework ready" employees to telework.

iii. MUST telework on an unscheduled telework (even if the government is closed) if the day falls on the employee's regularly scheduled telework day or if the employee otherwise scheduled telework on that day.

b. If an employee is designated "not telework ready" and the employee's supervisor approves unscheduled telework, the employee will be considered "telework ready" going forward and must execute an amended telework agreement reflecting that designation. The supervisor must communicate the new designation to the Office of Human Resources (OHR). (Until new telework agreement forms with a "telework ready" option are available supervisors may designate employees and notify OHR by email.).

3) Employees may elect to be designated "telework ready" at any time with written approval of their supervisor.

4) Employees may only elect to terminate their "telework ready" designation once a year during an open season to be announced by the USITC.

C. Grievability of Telework Ready Designation

1) A supervisor's decision to deny individual unscheduled telework requests is not grievable, such as when OPM announces an unscheduled telework day and, despite the employee's request for unscheduled telework, the employee's supervisor requires the employee to be in the office for valid business reasons.

2) A supervisor's denial of an employee's "telework ready" designation is grievable if the supervisor refuses to deem an employee "telework ready" for other than valid business reasons set forth in USITC telework policy.

Section 8: Eligibility and Participation

A. All employees are eligible for episodic telework. Regular telework shall also be broadly available, subject to reasonable business-related restrictions. The frequency of teleworking opportunities shall be established in the USITC Telework Handbook. Eligibility and frequency of participation may be limited for reasonable business-related reasons, such as for positions involving sensitive materials or those requiring daily face-to-face contact.

B. The telework program will be administered in a fair and equitable manner. Participation in the telework program will be based on business requirements rather than personal preferences. Employees performing similar functions for the Employer will have a similar opportunity to telework, whether it is regular or episodic, understanding that each employee in a job series may perform different functions on a day-to-day basis that differ in their business requirements for work in the office.

Unless required by the Employer under Section 6, telework is generally not available to staff unless they are currently performing at least at the "Effective" level. Also, telework is not available to employees subject to active formal disciplinary measures or performance improvement plans.

C. Telework will not be used in lieu of absence without official leave (AWOL) or leave without pay (LWOP).

Section 9: Terminations and Denials of Telework Agreements

A. Telework agreements may be denied or terminated based on operational needs of the Employer or individual performance of the teleworker in accordance with the provisions of the USITC Telework Handbook. For example, a supervisor may deny a telework arrangement if the duties of the position are not amenable to telework.

B. Terminations and denials of telework agreements should be provided in a timely manner. Supervisors should provide employees with signed written denials or terminations which include information about why the telework agreement was terminated or denied.

C. If the employee's termination or denial was the result of a performance issue, the termination or denial should include information about when the employee might reapply and, if applicable, what actions the employee should take to improve his/her chance of approval.

D. An Employer decision to terminate or deny eligibility for telework is grievable; a supervisor's decision to deny individual telework requests is not grievable absent a pattern of denial that amounts to denial of any opportunity to telework.

Section 10: Furniture and Equipment

The Employer will provide basic computing equipment for teleworkers. The Employer will not provide furniture or utilities to teleworkers. Teleworkers' alternate locations will be subject to meeting standards of safety and protection of sensitive information and government furnished equipment.

Further detailed procedures and standards will be provided in the USITC Telework Handbook.

Section 11: Hours of Work and Leave

Employees will retain the same work schedule in telework or non-telework status, absent the specific approval of the supervisor to adjust the schedule.

Section 12: Pay Issues

The Employer will follow OPM guidance regarding teleworkers' official worksite location for pay purposes. The Employer policy regarding overtime pay and compensatory time is addressed in the USITC Telework Handbook.

Section 13: Temporary Recall to Official Duty Station

A. Both the Employer and the Union recognize that mission accomplishment takes priority over the desire to telework and expect all employees to recognize when they are needed on site and to adjust their telework schedules accordingly, preferably without the need for management intervention.

B. Teleworking employees are subject to recall to the USITC's building for reasonable business-related requirements.

C. Supervisors will provide notice to teleworking employees who are required to report to their regular duty station for operational requirements.

ARTICLE XII: PERFORMANCE MANAGEMENT

Section 1: Within-Grade Increases

A. Laws and Regulations

1) Eligibility

Pursuant to 5 C.F.R. § 531.404, in order to be eligible for a within-grade increase (WGI), a General Schedule employee must meet the following three requirements:

a. The employee's performance must be at an acceptable level of competence, with a rating of record of at least Level 3, "Fully Successful" or equivalent (at USITC, "Fully Successful" equates to a rating of "Effective);"

b. The employee must have completed the required waiting period as set forth in 5 C.F.R. § 531.405; and

c. The employee must not have received an equivalent increase during the waiting period. Equivalent increases are defined in 5 C.F.R. § 531.407.

2) Determination of Acceptable Level of Competence

Pursuant to 5 C.F.R. § 531.409(a), the head of the agency or other agency official to whom such authority is delegated shall determine which employees are performing at an acceptable level of competence.

3) Notice of Determination of Acceptable Level of Competence

a. Pursuant to 5 C.F.R. § 531.409(e)(1), a level of competence determination (whether positive or negative) shall be communicated to an employee in writing as soon as possible after completion of the waiting period or other period upon which it was based.

b. Notice of negative determinations shall comply with the requirements set forth in 5 C.F.R. § 531.409(e)(2).

4) Reconsideration

a. Consistent with 5 C.F.R. § 531.410, an employee or an employee's personal representative may request reconsideration of a negative determination not more than 15 calendar days after receiving notice of determination.

b. 5 C.F.R. § 531.410(a)(4) requires the agency to provide the employee with a prompt written final decision.

5) Effective Date of Within-Grade Increases

a. The effective date of a WGI is set forth by 5 C.F.R. § 531.412.

b. Consistent with 5 C.F.R. § 531.412(b), when an employee receives a negative level of competence determination that is upheld, but an acceptable level of competence is achieved at some time after the negative determination, the effective date of the WGI is the first day of the first pay period after the acceptable determination has been made.

B. Acceptable Level of Competence

An employee shall be deemed to be performing at an acceptable level of competence when the employee's most recent rating of record is "Effective" or higher.

C. Notice of Performance at an Unacceptable Level of Competence

The Parties agree that:

1) Whenever the supervisor determines that an employee is not performing at an acceptable level of competence (the performance is not acceptable), the supervisor should inform the employee in writing.

2) Since unacceptable performance will result in denial of a WGI, the supervisor should notify the employee at least 30 calendar days before the end of the required waiting period.

3) The notice should specify the performance deficiencies as related to performance elements and standards established for the employee's position.

4) The supervisor should meet with the employee within seven calendar days after issuing the notice to discuss the deficiencies and advise the employee of what improvements are necessary to reach an acceptable level of competence. The supervisor will also present the employee with a performance improvement plan (PIP) prepared in accordance with USITC Directive 4202.1(17)(a), providing specific guidance as to the actions that must be taken for the employee to reach an acceptable level of competence, and explaining the consequences of the employee's failure to do so.

5) An employee may request the participation of a Union representative in discussions with the supervisor about performance, including discussions regarding

determination of withholding of a within grade increase or the need for a PIP. Supervisors have the discretion to grant these requests in situations where it might facilitate communication. The supervisor may also include another management official in the discussions at the supervisor's discretion. See Article III Employee Rights.

6) Failure to give the 30 calendar day advance written notice and/or to meet with the employee within five calendar days will not preclude withholding the WGI at the date when the employee would otherwise be eligible, if the employee has not performed at an acceptable level of competence.

D. Notice of Determination of Acceptable Level of Competence

The Parties agree that:

1) For the purposes of this Agreement, a level of competence determination shall be communicated to an employee in writing within 14 calendar days after completion of the waiting period or other period upon which it was based.

2) The appropriately designated agency official to reconsider negative competence determinations under 5 C.F.R. § 531.409(e)(2) is the employee's second-line supervisor.

E. Reconsideration

For the purposes of this Agreement, the appropriate official shall provide the written final decision not more than 14 calendar days after receiving the request for reconsideration.

F. Appeal to Merit Systems Protection Board

1) Employees may not appeal the withholding of a WGI increase to the Merit Systems Protection Board.

2) Employees may grieve the withholding of a WGI through the negotiated grievance procedure by filing a written grievance within 14 calendar days of receipt of a negative determination with the Chief Administrative Officer (following Step 3 of the negotiated grievance procedure).

3) In order to grieve the withholding of a WGI an employee must have requested reconsideration of the negative level of competence determination under Section E of this Article.

G. Effective Date of Within-Grade Increases

If a negative level of competence determination is reversed, the effective date of the WGI will be the first day of the first pay period following the original determination.

Section 2: Opportunity to Demonstrate Acceptable Performance and Performance Improvement Plans

A. Laws and Regulations

1) 5 U.S.C. § 4302(b) requires each agency's performance appraisal system to provide for "assisting employees in improving unacceptable performance" and "reassigning, reducing in grade, or removing employees who continue to have unacceptable performance but only after an opportunity to demonstrate acceptable performance."

2) 5 C.F.R. § 432.104

B. Performance Improvement Plan Procedures

USITC's performance improvement plan procedures are detailed in USITC Directive 4202.1 Performance Management System.

Section 3: Career Ladder Promotion Decisions

A. Laws and Regulations

In order to receive a career ladder promotion an employee must satisfy the following legal requirements:

1) The employee's rating of record must be "Fully Successful" (level 3) or higher consistent with 5 C.F.R. § 335.104. At USITC, "Fully Successful" equates to a rating of "Effective."

2) The employee must meet the 52 week minimum time in grade requirements set forth in 5 C.F.R. § 300.604.

B. Additional Requirements

In addition to the legal requirements, in order to receive a career ladder promotion, a USITC employee must:

1) Demonstrate the ability to perform higher level work at the "Effective" level;

2) Satisfy qualification requirements as stated in the position description; and

3) Satisfy any other job-related or documented factors relating to promotability, such as conduct, attendance, or additional documented performance-related guidance that has been shared in advance with the employee.

C. Non-promotion

1) An employee in a career ladder who has satisfied time-in-grade and performance level requirements for promotion but has not been promoted may request a written explanation from the employee's supervisor of the specific reasons for non-promotion no more frequently than once every 12 months.

2) The supervisor shall provide a written response detailing the reasons for non-promotion within 14 calendar days of receipt of the request.

The employee may grieve the reasons for non-promotion within 30 calendar days of receipt of the supervisor's response, consistent with the procedures set forth in Article XVII: Grievance Procedure.

D. Ongoing Communication on Promotion Readiness

Supervisors will discuss promotion readiness with employees occupying career ladder positions who have satisfied time-in-grade for promotion throughout the year but at least at the time of mid-term and annual performance appraisals.

E. Effective Date

Promotions will be effective at the beginning of the first pay period after the Office of Human Resources receives and approves the requested promotion action.

Section 4: Performance Appraisal Process

USITC's performance appraisal process is set forth in USITC Directive 4202.1, Performance Management System.

ARTICLE XIII: DETAILS (INTERNAL AND EXTERNAL)

Section 1: Definition of Detail

For the purposes of this article, a detail is a temporary reassignment of an employee to a position at the same grade as the position the employee currently occupies. A detail is not a temporary promotion. A temporary promotion is a temporary reassignment of an employee to a position at a higher grade than the position the employee currently occupies.

Section 2: Purpose of Details

A. The Employer and the Union agree that internal and external details provide important developmental opportunities for USITC staff. Further, the Employer and the Union agree that such developmental opportunities should be broadly available throughout the USITC in order to build valuable skill sets among the USITC's staff.

B. The Employer and the Union agree that it is desirable to provide the opportunity for a diverse group of people to participate in the developmental detail program to support succession planning and the diversity and inclusion program.

C. Internal details of USITC employees (within the USITC, e.g., to a Commissioner's office or other office within the agency) and external details (to other government agencies, e.g., USTR, the Hill, etc.) are authorized by the USITC because they provide developmental opportunities that benefit the USITC and its employees.

Section 3: Exclusions

This Article applies to any internal or external details for which bargaining unit members are eligible for consideration, subject to the following limitations:

1) The procedures in this Article do not apply to details to the positions of the Chairman's Chief of Staff and Deputy Chief of Staff.

2) This Article does not apply to temporary promotions which are covered by 5 C.F.R. § 335.102(f).

Section 4: Notice and Opportunity

A. Internal detail opportunities of more than 120 calendar days will be open to all eligible USITC employees via an application process.

B. The requesting office must provide a description of the duties, the length of the detail, and the documents that eligible employees must submit for consideration.

C. The Employer will ensure the broadest possible distribution of notice of detail opportunities subject to limitation for valid business reasons, such as performance or workload.

D. The Employer will provide concurrent notice of any detail opportunity to the Union.

Section 5: Submission and Selection

A. Application for a detail requires approval of the first-line supervisor and office director. In addition, application for an external detail to a Congressional Committee will be submitted to the Chairman's office for review and approval.

B. The Employer reserves the right to develop additional procedures for reviewing and approving external details.

C. The Employer will forward all approved applications to the selecting office. The selecting official has the discretion to make any selection from among the approved applications, as he/she sees fit.

Section 6: Duration and Extension

A. Internal and external details may not exceed 12 months, except as provided in subsection 6B.

B. Details may be renewed on an annual basis for valid business reasons.

C. The receiving office must notify the detailee's home office director of the desire to renew the detail at least 30 calendar days in advance of the expiration of the original detail.

Section 7: Return Rights

If a detail (internal or external) is approved, the ITC must grant return rights to the employee. Upon return, an employee is entitled to return to his or her former position if it still exists or a position of like seniority, status, and pay to which he or she would have been entitled if he or she had not accepted the detail.

Section 8: Performance Management

A. A detailee will be considered a staff member of the receiving office during the period of the detail and shall be under the administrative supervision of that office.

B. The detailee's first-line supervisor in the receiving office shall provide performance elements and standards reflecting the requestor's performance expectations to the employee and to the employee's home office first-line supervisor.

C. Performance appraisals of detailed employees will be performed in accordance with section 14(d) of USITC Directive 4202.1, Performance Management. In all cases, detailed employees will be rated by a USITC supervisor with input from others who supervised the employee's performance during the rating period.

Section 9: Non-Grievability

All decisions made under this Article are non-grievable.

ARTICLE XIV: MERIT PROMOTION AND CLASSIFICATION REVIEW

Section 1: Laws and Regulations

A. Basic Requirements

1) 5 C.F.R. § 335.103 requires agencies to establish merit promotion programs.

2) The five basic requirements for merit promotion programs are set forth in 5 C.F.R. § 335.103(b).

B. Exceptions

Exceptions to the competitive procedures in merit promotion plans are set forth in 5 C.F.R. § 335.103(c)(2) & (3).

C. Grievances

1) "Employees have the right to file a complaint relating to a promotion action." 5 C.F.R. § 335.103(d).

2) "While the procedures used by an agency to identify and rank qualified candidates may be proper subjects for formal complaints or grievances, nonselection from among a group of properly ranked and certified candidates is not an appropriate basis for a formal complaint or grievance." 5 C.F.R. § 335.103(d).

Section 2: Agency Merit Promotion Plan

A. The USITC Merit Promotion plan will be maintained by the Office of Human Resources and shall be issued in a Handbook. The Union will be given a copy to review and will provide comments for consideration.

B. The Handbook will include detailed procedures for the merit promotion process, including exception to competition and career ladder promotions, both of which are prescribed by OPM regulation.

C. The Handbook will be consistent with OPM regulation and this Agreement.

Section 3: Applicability

A. The provisions of this Article apply to positions within the bargaining unit.

B. The provisions of this Article do not apply to Management positions for which bargaining unit members may apply.

Section 4: Duration of Vacancy Announcements

A. Each merit promotion vacancy announcement will be advertised for at least 10 calendar days. This will help ensure that employees within the area of consideration who are absent for legitimate reason, e.g., on detail, on leave, at training courses, in the military service, or serving in public international organizations or on Intergovernmental Personnel Act assignments, receive appropriate consideration for promotion.

B. Exceptions require agreement of the Employer and the Union.

C. Employees who will be absent for 14 calendar days or more may deliver an application to the Office of Human Resources and request that they be considered for vacancies which may occur while they are absent. Employees must specify the period of time they will be away (the period during which they will be considered) and the series and grade(s) of positions for which they wish to be considered. Employees are responsible for monitoring job announcements. In no event will the hiring process be delayed by more than 14 calendar days.

Section 5: Number Selected

A. All vacancy announcements will advertise either one position or more than one position (to cover situations where intervening vacancies or the quality of candidates may change the number of positions that will be filled). Whenever possible, the number of actual vacancies will be included.

B. Multiple merit promotion selections may not be made from announcements limited to one position.

Section 6: Competition Required

A. When Management determines that a position should be reviewed and reclassified, potentially with an increase in grade, in most circumstances that position should be announced and competed to merit candidates.

B. Upgrades by accretion of duties and a classification review should be rare.

C. A decision to add duties to a position that results in an increase in grade, other than a desk audit, will be followed by competition.

Section 7: Classification Reviews

A. Management requests for Classification Reviews (Desk Audits) should be limited to reviewing positions that have changed significantly since they were originally classified.

B. In circumstances where there are more than one substantially similar position, a decision to perform a classification review should lead to a timely review of other positions if the first review resulted in a change in grade.

C. Employees will be informed of the results of the desk audit involving their position.

D. An employee may request a Classification Review of their own position either through the Agency or directly from OPM.

Section 8: Temporary Promotions

A. When an employee is temporarily assigned to a higher position, not including details to schedule C positions in the offices of USITC Commissioners, or the grade-controlling duties of a higher graded position for more than two full pay periods, the employee shall be temporarily promoted into and receive the rate of pay of that position commencing on the beginning of the first full pay period after Employer becomes aware that the temporary assignment will last more than two full pay periods.

B. If the temporary promotion will exceed 120 calendar days, the position must be advertised for at least 10 calendar days, consistent with Section 4 of this Article, and qualified employees allowed to compete for the assignment.

ARTICLE XV: EMPLOYEE ASSISTANCE AND COUNSELING

Section 1: Laws and Regulations

A. The Office of Personnel Management is responsible for developing and maintaining, in cooperation with the Secretary of the Department of Health and Human Services and with other agencies, appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with alcohol and drug abuse problems. 5 U.S.C. §§ 7361-62, 5 C.F.R. § 792.101.

B. Agencies shall establish and administer programs through which practitioners who are knowledgeable in counseling and referral services can offer and provide employees who have alcohol and/or drug problems short-term counseling and/or referrals for long-term counseling or treatment. 5 C.F.R. § 792.105(a).

Section 2: Agency EAP Program

A. The employer will provide an Employee Assistance Program (EAP) consistent with current laws and regulations for alcohol and drug abuse.

B. The employer's EAP shall also provide assistance to employees dealing with other personal problems, such as mental health and family issues.

C. The EAP program will include medical services for USITC employees through either the health clinic described in Article VIII: Health and Safety, Section 7 of this Agreement, or another similar facility.

D. While the Employer is responsible for paying for the initial EAP counseling session, employees are responsible for obtaining and paying for any additional and/or follow-up counseling services on an as-needed basis.

Section 3: Requesting Assistance through EAP

A. The employee may at any time request counseling assistance from the Office of Human Resources.

B. The supervisor may at any time recommend an employee discuss counseling assistance with the Office of Human Resources.

C. Counseling sessions will be confidential in accordance with the provisions of the Privacy Act and 42 C.F.R. Part 2.

Section 4: Employee Performance and Disciplinary or Adverse Actions

A. Counseling sessions do not constitute a basis for performance related action and/or disciplinary action in and of themselves.

B. Supervisors will not implement disciplinary or performance-related actions against an employee who has requested to participate in the EAP until the employee has been given a reasonable amount of time to seek counseling and demonstrate a diligent effort to correct performance and/or conduct deficiencies.

ARTICLE XVI: DISCIPLINARY AND ADVERSE ACTIONS

Section l: Laws and Regulations

A. Procedures for suspension of 14 calendar days or less are set forth in 5 U.S.C. §§ 7501-4 and 5 C.F.R. §§ 752.201-3.

B. Procedures for removal, suspension for more than 14 calendar days, reduction in grade or pay, or furlough for 30 calendar days or less are set forth in 5 U.S.C. §§ 7511-14 and 5 C.F.R. §§ 752.401-406.

C. The Employer may take action as described in A and B above only for such cause as will promote the efficiency of the service. 5 U.S.C. §§ 7503(a) and 7513(a).

Section 2: Applicability

A. This article applies to:

1) Oral admonishments,

2) Written reprimands,

3) Suspensions of 14 calendar days or less,

4) Suspensions of more than 14 calendar days,

5) Reductions in grade,

6) Reductions in pay, and

7) Furloughs of 30 calendar days or less.

8) Removals

B. This article does not apply to

1) Nondisciplinary counseling sessions conducted by supervisory and/or management officials,

2) Reduction in force actions,

3) Suspension or removal based upon national security reasons, or

4) Reduction in grade or removal based on unacceptable performance.

Section 3: Procedures

A. Disciplinary and adverse actions will normally be initiated by the employee's first-line supervisor. A supervisor may choose to conduct an investigation prior to choosing to take disciplinary action in order to gather relevant information.

B. Investigations and Investigatory Interviews

1) When a supervisor determines an investigation of possible or actual misconduct by an employee is necessary the supervisor will follow the procedures set forth below.

2) Supervisors will conduct discussions related to such investigations in private with the relevant employees.

3) Notice of Right to Union Representation

a. Consistent with 5 U.S.C. § 7114(a)(2)(B), a bargaining unit employee has the right to request Union representation at any examination of that employee by the employer in connection with an investigation (investigatory interview) if the employee reasonably believes that the examination may result in disciplinary action against that employee.

b. The Parties agree that

i. When a supervisor has reason to believe that disciplinary or adverse action against the employee may result from the investigatory interview of that employee, the supervisor shall advise the employee of his/her right to the presence of a Union representative; and

ii. Some discussions may become investigatory interviews during the course of discussion. At the time the supervisor recognizes that disciplinary or adverse action against the employee may result from discussions with that employee, the supervisor shall advise the employee of his/her right to the presence of a Union representative.

c. The Parties further agree that failure of the supervisor to give such advice shall not be grounds for a grievance or procedural error in the case of any adverse action against the employee.

d. See Article III: Employee Rights, Section 1(C) for applicable procedures.

C. Remedial Action

1) Oral Admonishment and Written Reprimand

    a. If the supervisor determines an oral admonishment or a written reprimand is warranted, the supervisor may take immediate action.

    b. An employee may grieve the oral admonishment or written reprimand following the negotiated grievance procedure.

2) Suspension of 14 Calendar Days or Less

    a. If the supervisor considers a suspension of 14 calendar days or less is warranted, the supervisor shall issue a written notice of proposed action.

    b. The written notice of proposed action shall include:

        i. The specific reasons for the proposed action;

        ii. Notice that the employee has seven calendar days from the date the written notice of proposed action is provided to the employee to answer orally and in writing and to furnish affidavits and other documentary evidence in support of such answer;

        iii. Notice that the employee has the right to Union representation in presenting such answer; and

        iv. Notice that the employee has the right to review the material which was relied on to support the reasons for action given in the notice.

    b. After receiving a written decision on disciplinary action and the reasons therefore, an employee may grieve suspensions of 14 calendar days or less taken under this Article in accordance with the provisions of the negotiated grievance procedure. See Article XVII: Grievance Procedure.

3) Removal, Suspension for More than 14 Calendar Days, Reduction in Grade or Pay, or Furlough for 30 Calendar Days or Less

    a. Advance Written Notice of Proposed Action

        i. If, as the result of an investigation, the supervisor considers a removal, suspension for more than 14 calendar days, reduction in grade or pay, or furlough for 30 calendar days or less is warranted, the supervisor shall issue a written notice of proposed action to the

employee and the Union (if the Union is representing the employee) within seven calendar days.

ii. Consistent with 5 U.S.C. § 7513(b) and 5 C.F.R. § 752.404 (b), an employee against whom an action is proposed shall receive 30 calendar days advance written notice of proposed action.

iii. Such notice will be issued at the lowest practical level of supervision but normally not higher than the second-line supervisory level.

iv. Consistent with 5 C.F.R. § 752.404 (b), the notice will state the specific reason(s) for the proposed action and inform the employee of his/her right to review the material which is relied on to support the reasons for action given in the notice.

b. Employee Answer to Advance Written Notice of Proposed Action

i. The employee will be given 14 calendar days to answer orally and/or in writing and to furnish affidavits and other documentary evidence in support of the answer.

c. The employee may elect to be represented by a Union representative or other representative of the employee's choice, including an attorney, upon release by the Union from exclusivity of representation. If an employee chooses representation other than the Union, then the employee must follow the procedures detailed in Article III: Employee Rights, Section 1(B)(1)(b) to release the Union from responsibility.

d. Final Written Decision

i. A written decision on the proposed action will normally be issued by a management official at a higher level than the person issuing the proposed action.

ii. Consistent with 5 C.F.R. § 752.404(g)(1), in arriving at a written decision, the Employer will consider only the reasons specified in the notice of proposed action and will consider any answer of the employee and/or the employee's representative made to the management official who issued the advance written notice.

iii. The Employer shall deliver the notice of decision to the employee and the employee's representative at the earliest practicable time and before the date the action will be effective.

iv. The notice shall tell the employee of his/her appeal rights.

e. Grievance and Appeal

i. The employee may appeal the final agency decision either to the Merit Systems Protection Board or through the negotiated grievance procedure, but not both.

ii. If the employee chooses to appeal the final decision under the negotiated grievance procedure, the provisions of that article concerning representation will apply.

Section 4: Labor-Management Cooperation

A. The Employer or the Union may bring up the matter of employee misconduct in labor-management consultations to identify underlying causes of misconduct and possible remedial actions such as counseling which might be recommended.

B. The Employer will advise the Union at the monthly Labor-Management Partnership Council (LMPC) meeting of the number of disciplinary actions proposed or taken against unit employees since the previous LMPC meeting.

ARTICLE XVII: GRIEVANCE PROCEDURE

Section 1: Laws and Regulations

A. General

5 U.S.C. § 7121(a) states:

"(1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d), (e), and (g) of this section [providing alternative avenues for raising certain matters], the procedures shall be the exclusive administrative procedures for resolving grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement."

B. Definitions

For the purpose of this Article:

1) Consistent with 5 U.S.C. § 7103(a)(9), "grievance" means any complaint:

    a. by any employee concerning any matter relating to the employment of the employee;

    b. by the Union concerning any matter relating to the employment of any employee; or

    c. by any employee, the Union, or the Employer concerning

        i. the effect or interpretation, or claim of breach of this Collective Bargaining Agreement; or

        ii. any claimed violation, misinterpretation, or misapplication of any law, rule or regulations affecting conditions of employment.

2) Consistent with 5 U.S.C. § 7103(a)(14), "conditions of employment" means personnel policies, past practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

    a. relating to political activities prohibited by law;

b. relating to the classification of any position; or

c. to the extent such matters are specifically provided for by Federal statute.

C. Election of Remedy

In the following instances, an aggrieved employee may elect the procedures under which to bring their complaint:

1) Prohibited Personnel Practices

a. An aggrieved employee affected by a prohibited personnel practice under 5 U.S.C. § 2302 (b)(1) may raise the matter under a statutory procedure or under this negotiated grievance procedure, but not both. 5 U.S.C. § 7121(d).

b. Aggrieved employees affected by a prohibited personnel practice other than a prohibited personnel practice under 5 U.S.C. § 2302 (b)(1) may elect one of the following remedies:

i. An appeal to the Merit Systems Protection Board under section 7701.

ii. A negotiated grievance procedure under this Section.

iii. Procedures for seeking corrective action under 5 U.S.C. Chapter 12, Subchapters II and III, as applicable.

2) Adverse Actions

a. Any complaint that involves actions based on unacceptable performance under 5 U.S.C. § 4303 (removals and reductions in grade for unacceptable performance) and adverse actions under 5 U.S.C. § 7512 (removals, suspensions for more than 14 calendar days, reductions in grade or pay, and furloughs for 30 calendar days or less) may be raised under the appellate procedures of 5 U.S.C. § 7701 or under this negotiated grievance procedure, but not both. 5 U.S.C. § 7121(e); see also 5 C.F.R. § 752.405(b) (suspensions of more than 14 calendar days, reduction in grade or pay, furlough for 30 calendar days or less).

b. The employee shall be deemed to have exercised this option at such time as the employee timely files a notice of appeal under the applicable appellate procedure or timely files a grievance in writing in accordance with the provisions of this Article. 5 U.S.C. § 7121(e)(1).

c. Any such grievance must be initiated by the employee within 30 calendar days of receipt of the adverse action decision by submitting such grievance at step 3 of the procedures outlined in Section 3 below.

D. Exclusions

1) Legal Exclusions

a. Under 5 U.S.C. § 7121(c) the negotiated grievance procedure shall not apply to:

i. Any claimed violation of Subchapter III of Chapter 73 of Title 5 U.S.C. (relating to prohibited political activities);

ii. Retirement, life insurance or health insurance;

iii. A suspension or removal under 5 U.S.C. § 7532 (relating to national security matters);

iv. Any examination, certification, or appointment; or

v. The classification of any position which does not result in the reduction in grade or pay of an employee.

b. In addition, the negotiated grievance procedure shall not apply to:

i. Non-selection for a promotion from a group of properly ranked and certified candidates. 5 C.F.R. § 335.103(d).

ii. Complaints by employees with temporary appointments of less than four months (excluded from the bargaining unit in Article II: Definition of Unit, Section 2);

iii. Matters already filed with the Merit Systems Protection Board that involve an adverse action. These actions are statutorily precluded from duplicate filing under this procedure (5 U.S.C. § 7121(e)); or

iv. Matters already filed with the Equal Employment Opportunity Commission concerning discrimination complaints which are, therefore, statutorily precluded from duplicate filing under this procedure or raised under the USITC's EEO complaint resolution process.

2) Negotiated Exclusions

a. The Parties agree that the negotiated grievance procedure shall not apply to:

i. The termination of an employee during the one-year probationary period for unsatisfactory performance or conduct or conditions arising before employment (these employees may appeal to the Merit Systems Protection Board on discrimination or improper procedure (5 C.F.R. § 315.806));

ii. Matters concerning a reduction in force (an employee who has been furloughed for more than 30 calendar days, separated, or demoted by a reduction in force may appeal to the Merit Systems Protection Board (5 C.F.R. § 351.901));

iii. Awards;

iv. Employer decisions made under Article XIII: Details (Internal and External);

v. A supervisor's decision to deny individual telework requests (Article XI: Telework Section 9(D) of this Agreement); and

vi. A supervisor's decision to deny individual requests for unscheduled telework (Article XI: Telework, Section 7(C)(1) of this Agreement).

E. Arbitration

Any grievance not satisfactorily settled under this grievance procedure shall be subject to binding arbitration which may be invoked by either the Union or the Employer. 5 U.S.C. § 7121(b)(1)(C)(iii).

Section 2: Efforts to Settle

A. The purpose of this Article is to provide a mutually acceptable method for the prompt and equitable settlement of legitimate disputes.

B. The Employer and the Union recognize that every effort should be made to communicate openly and settle disputes expeditiously at the lowest possible level.

C. Union representatives shall participate in these grievance procedures unless the Union is relieved by the employee in writing from representing the employee. If an employee chooses representation other than the Union, then the employee must follow the

procedures detailed in Article III: Employee Rights, Section 1(B)(1)(b) to release the Union from responsibility.

Section 3: Grievance Procedure

This grievance procedure consists of four (4) steps (all time is in calendar days).

Step 1 – Informal Discussions with Supervisor
Step 2 – Submit Formal Written Grievance to Second-Line Supervisor
Step 3 – Submit Formal Written Grievance to Chief Administrative Officer
Step 4 – Referral to Arbitration

See the table below for a summary of the grievance procedure steps and corresponding time limits.

A. Step 1 – Informal Discussions With Supervisor

1) Any employee of the bargaining unit desiring to file a grievance must first discuss the matter informally with his/her first-line supervisor within 30 days of the date of the management act or occurrence giving rise to the grievance, or within 30 days of the date the employee first became aware of such act or occurrence.

2) For performance evaluations the second-line supervisor must take part in the informal discussion process if requested by the employee.

3) The employee shall allow the first-line supervisor 14 calendar days from the date of the initial discussion to satisfactorily resolve the matter.

B. Step 2 - Submit Formal Written Grievance to Second-Line Supervisor

1) If the matter is not satisfactorily resolved within 14 calendar days of the initial discussion between the employee and his/her supervisor(s), the employee or his/her Union representative within 14 calendar days may begin the formal grievance process by submitting the grievance in writing to the second-line supervisor.

2) The formal written grievance shall contain:

a. the employee's name;

b. the name of employee’s Union representative, if any;

c. the specific nature of the grievance, including the article(s) of this Agreement that the employee believes may have been violated, if any;

d. the date of the management act or occurrence giving rise to the grievance, or the date the employee first became aware of such act or occurrence;
e. the date the grievance was discussed with the supervisor(s);

f. the supervisor(s)' written response, if any;

g. the corrective action desired; and

h. any other documentation related to the issue(s) being grieved.

3) The corrective action requested may not include a request for disciplinary or other action which would either benefit or act to the detriment of someone else without directly benefiting the grievant.

4) The employee's second-line supervisor shall review the formal written grievance and give the employee and the employee's Union representative a written response within 14 calendar days of receipt of the grievance.

5) Exceptions

a. If the Chairman or the Chief Administrative Officer (CAO) is the second-line supervisor, the employee will bypass step 2 of the grievance procedure and send the formal written grievance directly to the CAO.

b. If the CAO receives a grievance where the CAO has been involved in the situation that gave rise to the grievance, has a personal interest in its outcome or for any other reason believes it would be inappropriate for the CAO to be the deciding official, the CAO will refer the grievance to the Director, Office of Operations, who will assume the duties, responsibility, and authority of the CAO for the grievance.

C. <u>Step 3 –Refer Grievance to Chief Administrative Officer</u>

1) If the grievance is not satisfactorily resolved within 14 calendar days of the formal written grievance being submitted to the employee's second-line supervisor, the employee or the employee's Union representative may refer the grievance to the CAO.

2) The employee or the employee's Union representative must refer the grievance to the CAO in writing:

a. Within 14 calendar days of receiving the second-line supervisor's written response to the formal written grievance, or

b. Within 28 calendar days of submitting the formal written grievance if the second-line supervisor fails to provide a written response within 14 calendar days.

3) A written grievance referred to the CAO must contain:

   a. all of the documentation required for a formal written grievance described in step 2 above;

   b. a copy of the formal written grievance that was submitted to the second-line supervisor;

   c. the supervisor's written response to the formal written grievance, if any;

   d. the second-line supervisor's response to the formal written grievance, if any.

4) The CAO shall review the grievance and give the employee and the employee's Union representative a final written response within 30 calendar days.

D. Step 4 – Referral to Arbitration

The Union may refer employee grievances not satisfactorily resolved in step 3 to binding arbitration in accordance with Article XVIII: Arbitration of this Agreement within 30 calendar days.

Grievance Procedure Summary		
Action	**Time Limit**	**Calendar Days**
Step 1		
Discuss matter informally with supervisor	Must occur within 30 days of the date of the management act or occurrence giving rise to the grievance or within 30 days of the date the employee first become aware of such act or occurrence	30
Allow supervisor 14 days to resolve the matter satisfactorily	14 days from the date of the informal discussion with the employee	14
Step 2		
Submit formal written grievance to second-line supervisor	If the matter is not satisfactorily resolved within 14 days of the date of the informal discussion with the supervisor, the employee has 14 more days to submit the formal written grievance to the second-line supervisor	14
Written response from second-line supervisor	The second-line supervisor will provide a written response to the employee and the union within 14 days of receipt of the formal written grievance	14
Step 3		
Refer formal written grievance to the CAO	The employee may refer the formal written grievance to the CAO within 14 days of receiving the second-line supervisor's written response to the formal written grievance or within 28 days of submitting the formal written grievance if the second-line supervisor fails to provide a written response	14
Written response from the CAO	The CAO will provide a written response to the employee and the union within 30 days of receipt of the grievance	30
Step 4		
Referral to binding arbitration	The union may refer employee grievances not satisfactorily resolved by the CAO to binding arbitration	30

Section 4: Group Grievance

Matters involving employees as a group as distinguished from individual grievances shall be processed starting at the lowest level stated above at which authority exists for possible redress of the grievance.

Section 5: Time Limits

A. Failure of a supervisor to meet the time limits provided means the grievance is denied and the employee or the employee's Union representative may proceed to the next step.

B. Failure of an employee to meet the time limits imposed means that the grievance may be dismissed by the CAO.

C. All time limits provided for in this Article may be extended by consent of all the Parties involved.

ARTICLE XVIII: ARBITRATION

Section 1: Laws and Regulations

5 U.S.C. § 7121 (b)(1)(C)(iii) requires any negotiated grievance procedure to "provide that any grievance not settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency."

Section 2: Procedures

A. Request for Binding Arbitration

1) The Employer or the Union may request arbitration in writing within 30 calendar days after issuance of a final decision on any grievance processed under the negotiated grievance procedure that the Employer and the Union fail to settle.

2) A request for arbitration can be made only by the Employer or the Union. An employee cannot at his/her own election elevate a grievance to the arbitration process.

B. Selection of Arbitrator

1) Within seven calendar days from the date of the request for arbitration, the Employer and the Union shall meet to define the issues and to jointly request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven impartial arbitrators qualified to hear federal sector issues.

2) The Parties will meet within seven calendar days after receipt of the FMCS list of arbitrators to select an arbitrator.

3) If the Parties cannot agree upon one of the listed arbitrators, representatives of the Union and the Employer shall alternately strike one arbitrator's name from the list of seven arbitrators until only one name remains. The name remaining shall be the duly selected arbitrator. Initial striking shall be determined by chance.

4) FMCS shall be empowered to make a direct designation of an arbitrator to hear the case in the event that either party refuses to participate in the selection of an arbitrator or upon undue delay on the part of either party.

C. Arbitration Hearing Schedule

1) Representatives of the Employer and the Union shall jointly make arrangements for a hearing on a mutually acceptable date within 30 calendar days of notification by the selected arbitrator of his availability.

2) The arbitration hearing will be held, if practicable, on the USITC's premises during the normal tour of duty.

3) All participants in the arbitration hearing shall be on official time during their regular duty hours.

4) To facilitate scheduling, the Union shall provide the Employer with a list of proposed witnesses in writing at least seven calendar days prior to the scheduled date of the hearing.

D. Grievance Withdrawal

The grievant may withdraw the grievance at any time prior to the actual convening of a hearing or submission of the case to the arbitrator.

E. Arbitration Hearing Procedures

1) The arbitrator shall have the authority to make all grievability and/or arbitrability determinations.

2) The Employer and the Union shall submit questions of arbitrability to the arbitrator by brief for decision prior to the hearing, unless mutually agreed otherwise.

3) The issue(s) as submitted to the arbitrator shall be identical to those considered during the grievance procedure.

4) If the Parties fail to agree on a joint submission of the issue(s) for arbitration, each party shall submit a separate statement to the arbitrator who shall determine the issue(s) to be heard at the beginning of the hearing.

F. Decision

1) The arbitrator shall render the decision as quickly as possible, but in any event not later than 30 calendar days after the conclusion of the hearing.

2) The Parties may extend the time limit for the arbitrator's decision by mutual agreement.

3) The arbitrator shall limit the decision to the issues submitted and make no recommendations that contravene public law or regulations.

4) The arbitrator shall not order the change of any agency policy issued consistently with applicable law or regulation.

5) The arbitrator has no authority to add on, subtract from, alter, amend, or modify any provisions of this Agreement or impose on the Union or the Employer any limitation or obligation not specifically provided for under the terms of the Agreement.

6) The arbitrator's award shall be binding on the Employer and the Union.

7) If no exception is filed, the arbitrator's decision and remedy shall be effective immediately.

G. Exception

Either the Employer or the Union may file an exception to the arbitrator's award with the Federal Labor Relations Authority under the regulations prescribed by the Authority within 30 calendar days of the date of service of the award.

H. Arbitration Fees

The arbitrator's fee and the expenses of arbitration shall be borne equally by the Employer and the Union.

ARTICLE XIX: UNFAIR LABOR PRACTICES

Section 1: Laws and Regulations

Unfair labor practices are defined as violations of the rights and obligations created under 5 U.S.C. Chapter 71. See 5 U.S.C.§ 7116(a) and (b). Contract violations are handled through grievance procedures.

Section 2: Filing Complaints of Unfair Labor Practices

When the Employer, the Union, or an employee files an unfair labor practice charge, the filing party must specify the unfair labor practice that has allegedly been committed.

Section 3: Unfair Labor Practices by the Employer

Under 5 U.S.C. § 7116(a), it shall be an unfair labor practice for the Employer—

1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under 5 U.S.C. Chapter 71;

2) to encourage or discourage membership in the Union by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

3) 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;

4) 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 5 U.S.C. Chapter 71;

5) to refuse to consult or negotiate in good faith with a labor organization as required by this Agreement;

6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by 5 U.S.C. Chapter 71;

7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of title 5) which is in conflict with this Agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

8) to otherwise fail or refuse to comply with any provision of 5 U.S.C. Chapter 71.

Section 4: Unfair Labor Practices by the Union

Under 5 U.S.C. § 7116(b), it shall be an unfair labor practice for the Union—

1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under 5 U.S.C. Chapter 71;

2) to cause or attempt to cause the Employer to discriminate against any employee in the exercise by the employee of any right under 5 U.S.C. Chapter 71;

3) to coerce, discipline, fine, or attempt to coerce a member of the Union 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;

4) 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 nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

5) to refuse to consult or negotiate in good faith with the Employer as required by 5 U.S.C. Chapter 71;

6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by 5 U.S.C. Chapter 71;

   a. 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 Employer's operations, or

   b. to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

7) to otherwise fail or refuse to comply with any provision of 5 U.S.C. Chapter 71.

ARTICLE XX: RIFS, FURLOUGHS, AND TRANSFERS OF FUNCTIONS

Section 1: Laws and Regulations

A. Reductions in force (RIFs) are authorized by 5 U.S.C. §§ 3501-3504 and implemented by 5 C.F.R. Part 351.

B. A RIF occurs when an agency "releases a competing employee from his or her competitive level by furlough for more than 30 days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; the exercise of reemployment rights or restoration rights; or reclassification of an employee's position due to erosion of duties when such action will take effect after an agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within 180 days." 5 C.F.R. § 351.201(a)(2).

C. "Each competing employee selected for release from a competitive level under this part is entitled to a specific written notice at least 60 full days before the effective date of release." 5 C.F.R. § 351.801(a)(1).

D. The required content of employee notice is set forth in 5 C.F.R. § 351.802.

E. "When a reduction in force is caused by circumstances not reasonably foreseeable, the Director of OPM, at the request of an agency head or designee, may approve a notice period of less than 60 days…" 5 C.F.R. § 351.801(b).

F. "Each agency shall establish competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that an agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption." 5 C.F.R. § 351.403(a)(1).

G. "When a competing employee is to be released from a competitive level under this part, the agency shall establish a separate retention register for that competitive level." 5 C.F.R. § 351.404(a).

H. The requirements for establishing an agency reemployment priority list are contained in 5 C.F.R. §§330.201-214.

Section 2: RIF Alternatives

A. To eliminate or minimize the adverse effect upon employees in a RIF situation, the Employer shall to the maximum extent feasible, as determined by the Employer, achieve the necessary personnel reductions by using alternatives to a RIF such as attrition, early retirement, reassignment, reimbursable details, and the freezing of external hiring for the duration of the RIF.

B. If a RIF is necessary the Employer will make reasonable effort to ensure that each affected employee has an opportunity to be considered for existing vacancies for which the employee is qualified, following 5 C.F.R. Part 351.

Section 3: Circumstances not Reasonably Foreseeable

For the purposes of determining the appropriate notice period, shortage of funds shall always be considered "circumstances not reasonably foreseeable."

Section 4: Advance Notice to the Union

A. Advance Notice Period

1) The Employer agrees to notify the Union no less than 90 calendar days in advance of any RIF, except when a RIF is caused by circumstances not reasonably foreseeable.

2) The Employer agrees to notify the Union in writing no less than 120 calendar days prior to any RIF based on a reorganization other than for circumstances not reasonably foreseeable.

3) The Employer shall provide notice to the Union at the earliest practical time, as well as prior to official notice to affected unit members.

B. Content of Advance Notice to the Union

Notice to the Union shall contain the following:

1) The reason for the RIF;

2) The maximum number, type, and grade of positions identified for abolishment as of the date of notification; and

3) The anticipated effective date of the RIF.

Section 5: Competitive Levels

A. The Employer shall provide the Union with a list of the competitive levels within 14 calendar days of the notification of a RIF to affected employees and the Union.

B. Upon receipt of the competitive levels, the Union may request additional documentation from the agency as to the justification for subdividing positions within a single classification series and grade into any further competitive levels. The Employer shall provide this documentation within seven calendar days of a Union request.

Section 6: Retention Register

A. The Employer shall make available all relevant retention registers and related records for review by employees receiving a general or specific RIF notice and their Union representatives.

B. Any employee receiving a RIF notice may review the relevant retention registers and related records with the employee's Union representative for information such as:

1) the employee's competitive level,

2) the competitive levels where there are employees who may displace the employee, and

3) the competitive levels into which the employee believes the employee may bump or retreat.

C. Employees will be allowed official time to review the relevant retention registers.

Section 7: Offers of Reassignment

A. Upon receipt of a specific notice with an offer of reassignment on or after the effective date of a RIF, the employee shall have 15 calendar days to either accept or reject the offer of reassignment.

B. If an employee rejects an offer of reassignment that employee may be separated immediately.

Section 8: Freezing of Performance Rating of Record

A. The performance rating of record in the official file at the time of the written notification to the Union pursuant to Section 4 above will be frozen and used as the official rating for all RIF computations.

B. Employees who do not have a current performance rating (i.e., have entered on duty without an appraisal by USITC) will be considered as having an "effective" rating.

Section 9: Assistance for Employees Affected by a RIF

A. The Employer shall provide counseling for all employees affected by a RIF.

B. The Employer agrees to refer any separated employee in tenure group I or tenure group II (as defined by 5 C.F.R. § 351.501(b)) to:

1) USITC Career Transition Services

2) USITC Special Selection Priority under the Career Transition Assistance Plan (CTAP)

3) USITC Reemployment Priority Lists (RPL)

Section 10: Appeal, Grievance, and Arbitration

An employee who has been furloughed for more than 30 calendar days, separated, or demoted by a reduction in force action may appeal to the Merit Systems Protection Board.

A. If an appeal includes allegations of discrimination within the purview of Title VII of the Civil Rights Act, 42 U.S.C. § 2000E et seq., the employee, or employees, may elect to pursue the statutory appeal procedures relating to allegations of discrimination.

B. A RIF, furlough of more than 30 calendar days, or transfer of functions is not grievable through the negotiated grievance procedure.

C. The Union retains the right to file and arbitrate any grievance affecting a right of the Union's; however, the union may not grieve or arbitrate the rights of either an individual or group of bargaining unit members that involves a RIF, furlough of more than 30 calendar days, or a transfer of function.