

Labor-Management Agreement

Between

The Judge Advocate General's Legal Center and School

And

The National Federation of Federal Employees, FL2

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## **ARTICLE 1**

### **RECOGNITION AND UNIT DESIGNATION**

1. Recognition: Management recognizes that the National Federation of Federal Employees (NFFE-IAM, AFL-CIO), FL2, as the exclusive representative of all employees in the Bargaining Unit.
2. Units: This Agreement is applicable to the nonprofessional Bargaining Unit covering LCS employees.
3. Changes: Management shall notify the Bargaining Unit of any bargaining unit status change to a position covered by the Bargaining Unit. If there is a disagreement over the position's Bargaining Unit status, Management or the Bargaining Unit shall file a Clarification of Unit (CU) Petition with the FLRA. The Union has the right to file a CU Petition when it believes the Bargaining Unit status of a position should be changed. The status of the disputed position will remain the same until such time as a decision is reached on the petition.

## **ARTICLE 2**

### **IMPLEMENTATION OF THE AGREEMENT**

Within ninety (90) days of the approval date of this Agreement, and upon certification of a new Unit or an amendment to an existing Unit, the Parties will meet to discuss the terms and conditions of this Agreement.

All statutes and government-wide regulations supersede any contrary language found in this Agreement. Department of Defense and Army regulations, instructions and directives in effect on the date of this Agreement will remain in effect through the life of this Agreement unless superseded by contrary language found in this Agreement.

Provisions of the collective bargaining agreement that conflict with the National Security Personnel System (NSPS) regulation and implementing issuances, or any such personnel system that replaces NSPS, will be governed by the final rules of the NSPS or any such personnel system that replaces NSPS when implemented.

## **ARTICLE 3**

### **DEFINITIONS**

For the purpose of this Agreement, the terms listed below are defined as follows:

1. Alternate Dispute Resolution (ADR): ADR is a number of methods by which disputes can be resolved at a level that usually does not include an administrative hearing or litigation.
2. Changes to Organizations: Changes to organizations are those which:
  - a. result in the establishment or abolishment of one or more position covered by the bargaining unit, or
  - b. the redistribution of duties amongst existing positions covered by the bargaining unit resulting in a significant change in duties in one or more position covered by the bargaining unit.
3. CG: Commanding General, TJAGLCS.
4. Consensus: Means when all members of a group agree upon a single alternative and each group member can honestly say: "I believe that you understand my point of view and that I understand yours. Whether or not I prefer this decision, I support it because it was reached fairly and openly and it is the best solution for us at this time."
5. Day: Unless stated otherwise, day means calendar day. If a due date falls on a Saturday, Sunday, or holiday, the next official workday will be considered the due date.
6. Emergency Situation: Means any situation that is temporary in nature, that poses sudden, immediate, or unforeseen work requirements as a result of natural phenomena or other circumstances beyond Management's reasonable control or ability to anticipate.
7. Employee: Means an individual employed at THELCS who is included in the Bargaining Unit or otherwise recognized by the Parties during interim situations.
8. Interest-Based Problem Solving: Means a process of resolving problems by mutually identifying issues, interests, options, and standards by which those options are evaluated. The solution is reached by consensus.
9. Management: Means an individual employed by the LCS in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the LCS.
10. Midterm Negotiations: Bargaining changes affecting conditions of employment during the life of this Agreement, which are not in conflict with this Agreement.

11. Negotiation: Means the mutual obligation of the Parties to meet or otherwise communicate at reasonable times on a timely basis and bargain in a good faith effort to reach agreement with respect to conditions of employment.

12. Reorganization: Reorganization is an example of "change to an organization," as defined in Section 2 above.

13. Service Computation Date: For purposes of seniority in this Agreement, Service Computation Date will be computed on the basis of Leave Service Computation Date.

14. Supervisor: Means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, ---recall, suspend, discipline; or remove employees; to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment.

15. Subordinate Agreements: Any agreement negotiated by the Parties, other than this Bargaining Agreement.

16. Union: Means the NFFE FD1, IAMAW, AFL-CIO, TJAGLCS Unit, Local Officers of the Union, Union Stewards, and other authorized representatives designated by any of the above.

17. Union Official and/or Union Representative: Means a representative or designee of the NFFE FD1, IAMAW, AFL-CIO TJAGLCS Unit, any accredited National representative of the NFFEFD1 IAMAW, AFL-CIO, or the duly elected or appointed Union Representatives of NFFE FD1, IAMAW, AFL-CIO.

18. LCS: Means The Judge Advocate General's Legal Center and School.

## ARTICLE 4

### EMPLOYEE RIGHTS

1. The Parties agree to mutually establish and maintain an environment that protects human dignity and mutual respect, assures equal treatment of employees, and maintains high standards of employee performance.

2. Rights: Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided, such rights include the right:

a. to act for the Labor Organization of their choice 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 Government, the Congress, or other appropriate authorities;

b. to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees;

c. to be free from coercion in the workplace regarding investing their money, donating to charity, or participating in similar types of activities;

d. to request representation by the Union at any meeting between the employee and management regarding a complaint concerning conditions of employment.

e. to be represented by an attorney or representative other than the National Federation of Federal Employees, of the employee's own choosing, at the employee's own expense, in any statutory appeal action, unless attorney's fees are awarded by an appropriate authority;

f. to engage in outside activities and employment of their own choosing, and otherwise conduct their private lives as they see fit, in accordance with applicable laws.

3. Weingarten Right: An employee has the right (commonly known as the Weingarten Right) to be represented by the Union at any examination of the employee by a Representative of the agency in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests representation.

4. Once a year, employees will be given notification of the right to request Union representation at any Management initiated investigation that the employee reasonably believes may result in disciplinary action. Notification will be by email and also by permanently posting the notification on the LCS intranet (the "I:" drive).

5. In accordance with Article 7, the Union shall have access to Management's internal mail systems including electronic mail for supplementing this notice.

6. Employees will be authorized a reasonable amount of official time in pursuit of rights under this agreement. Employees who are using official time will inform his/her/their supervisor(s) of the approximate length of time needed and the location where the employee will be. If the employee cannot be released at the requested time due to work-related reasons, the employee will be released as soon as the work requirement is met or appropriate alternate arrangements are made. However, in no case will the employee be released more than 5 days following the request. If delay in releasing an employee involves a situation with a contractual time limit, the time limit will be extended to accommodate the delay.

7. Requests for use of Official Time will be presented to the supervisor on the Request for Official Time Form (See Appendix A) and notated on the employee's time card using the appropriate code. Employees requesting Official Time will state the purpose of the Official Time and the approximate amount of time needed. Approved Official Time will only be used for the requested purpose.

8. This Agreement does not prevent any employee, from bringing matters of personal concern to the attention of appropriate officials in accordance with applicable laws, regulations or Agency policies. If the employee is pursuing an avenue of redress which requires an exclusive election of that forum, the employee will be precluded from raising the same issue in an alternate forum.

9. An employee may request reassignment at any time. Management will consider the request and will respond in writing within a reasonable time, stating the reasons for the decision.

10. Employees shall be kept informed of rules, regulations and policies under which they are obligated to work.

11. Records maintained on an employee that are not maintained on a permanent basis will be removed from official files in accordance with applicable statutes, government-wide regulations, DOD regulations and Army regulations. Employees have the right to review the contents of their Official Personnel Folder and may request a copy of any documents from their OPP.

a. In accordance with the provisions of this agreement and upon request, a bargaining unit employee may review his/her Official Personnel Folder (OPF) at THE LCS during regular hours of operation.

b. If the employee satisfies the OPM requirements for a designated representative to review his/her OPF, the designated representative may do so.

c. An employee may have their Union Representative present with them while they review their OPF if they so choose.

12. Employees shall not be given written warnings or formal counseling's on conduct or unacceptable performance except in a setting that protects confidentiality.

13. Management will not access an employee's electronic profile or storage media except as prescribed in Army Regulations (AR) 380-53 and 380-5.

## ARTICLE 5

### UNION RIGHTS AND REPRESENTATION

#### 1. Representation

a. The Union is the exclusive representative of the employees in the Bargaining Unit and is entitled to act for these employees. The Union is responsible for representing the interests of all employees in the Bargaining Unit without discrimination and without regard to Union membership.

b. The properly designated officers or representatives of NFFEFD1, IAMAW, AFL CIO and FL 2 have the right represent the employees with the entire Bargaining Unit in THE LCS. The Union will inform the LCS of the names of those employees who have been properly designated officers or representatives of NFFE FD1, IAMAW, AFL-CIO and FL 2.

2. The Union has the exclusive right to represent employees under the negotiated Grievance procedure in this Agreement (see Article 9 and 10) and to invoke binding arbitration. An employee or group of employees may present a grievance without representation by the Union, provided that the Union is a party to all grievances processing including any and all adjustments. The adjustment must be consistent with the terms of the Agreement. The Union will have access to all written responses. The Union will be given copies of all decisions.

3. Union Representatives: The Union has the right to designate Bargaining Unit representatives. The designated Union representatives and their designation as points of contact will be given in writing to the employer. The employer will recognize representatives designated by the Union.

4. Formal Discussions: The Chief Steward for the Union or his/her designee will be given reasonable notice of, and an opportunity to be present at formal discussions. A formal discussion is any discussion between one or more representatives of THELCS and one or more Bargaining Unit employees concerning any grievance, personnel policy or practice, or other general condition of employment that occurs under circumstances that make it formal within the meaning of 5 U.S.C. §7114 and applicable regulations. If the Chief Steward for the Union, or his/her designee learns of meeting which he/she believes might be a formal discussion, and for which the union believes proper notice was not given, the union will inquire of the agency regarding the meeting, rather than not attend and claim a lack of notice. The Union agrees to sign a confidentiality agreement regarding any formal discussions that involve the personal or confidential information of any employee.

5. Official Time:

a. Union officials will be granted reasonable official time to perform the following representational functions:

- (1) Review Management's proposals concerning negotiations and changes in policies, practices, and matters concerning working conditions.
- (2) Perform general representational and contract administration functions.
- (3) Receive, review, prepare, and present grievances.
- (4) Handle complaints such as FLRA, MSPB, EEOC, GAO, etc., where the Union is a party to the complaint or has been designated as the Representative for the complaining bargaining unit member employee.
- (5) Prepare for negotiations.
- (6) Negotiate.
- (7) Prepare reports required by 5 U.S.C. 7120(c).
- (8) Contact other Union officials regarding the aforementioned functions.
- (9) To respond to parties, including journalistic media and members of the general public, who make inquiries of the Union about issues affecting the terms and conditions of employment of the bargaining unit. The Union will inform the CG, within 24 hours, about any and all such requests which they receive which fall within coverage of this section. The Union will not imply or suggest that their statements in any way reflect or represent the position of the LCS.

b. Official Time will not be used for internal union business or other administrative and clerical functions associated with running the union. Approved Official Time will be used only for the requested purpose, for the approved duration, and during the approved block of time. Upon request, the union will provide confirmation that Official Time was used for the approved purpose.

6. Release Procedures For Use Of Official Time: This is the procedure for release for official time:

a. If the Union Official cannot be released immediately due to work-related reasons, the Union Official will be released as soon as the work requirement is met or other appropriate arrangements are made. Delay of more than one day in release will be given to the Union Official in writing. The Union Official can request that the reason for the delay be explained. If a delay in releasing a Union

Official involves a situation with a contractual time limit, the time limit will be extended equal to the delay.

7. Membership Drives: Upon request and subject to normal security limitations or conflicting significant events in the LCS, the Union shall be granted authority to conduct up to two membership drives within a one (1) year period, up to 5 working days duration each, before and after duty hours, during annual leave, or during break periods and lunch periods. The dates will be coordinated with Management so as not to conflict with, undermine, or detract from, official LCS functions. Upon request, Management shall provide the Union with available, reasonable and visible space in the break area outside Room 132, tables, bulletin boards, and easels for use in such drives. Internal mail distribution facilities, including the use of email shall be made available in accordance with Article 7. The Union will inform the Bargaining Unit of the requirement that participation in the membership drive occur only during non-duty time, which includes break and lunch periods.

8. Restraint: There shall be no restraint, coercion, or discrimination against any Union official because of the performance of duties in consonance with this Agreement and the Act, or against any employee for filing a complaint or acting as a witness under this Agreement, the Act, or applicable regulations.

9. Management agrees to approve leaves of absence of any employee elected to a position of national officer of the Union for the purpose observing full-time in an elected position. Employees elected to such national positions will provide management an estimated date of return to their position in the LCS. Such employees will further advise the LCS as soon as practicable if the stated date of return changes to be either earlier or later. This article does not limit Management from exercising its right to temporarily fill positions vacated by employees who take positions as national officers in the Union.

## ARTICLE 6

### MANAGEMENT RIGHTS

1. Government Regulations: In the administration of all matters covered by this Agreement, the Parties and the employees are governed by existing or future laws and regulations of appropriate authority.
2. The exercise of Management's rights does not abrogate the Union's rights to request negotiation of:
  - a. procedures which Management Officials of the LCS will observe in exercising authority under this Article; or
  - b. appropriate arrangements for employees adversely affected by the exercise of any authority under Section 7106(b) of Chapter 71, Title 5 of the U.S. Code by such Management Officials.
3. Reserved Rights: Nothing in this Agreement shall affect the authority of any management official
  - a. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency, and
  - b. In accordance with applicable laws:
    - (1) to hire, assign, direct, layoff, and retain employees, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against employees.
    - (2) To assign work, to make determinations with respect to contracting out, and to determine the personnel by which Management's operations shall be conducted;
    - (3) with respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion or from any other appropriate source; and
    - (4) To take whatever actions may be necessary to carry out the Agency mission during emergencies.
4. Permissive Rights: - 5U.S.C. 7106(b) (l):

a. Subject only to specific delegations of authority within the LCS, negotiations may take place, at the sole election of the LCS, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work.

## ARTICLE 7

### UNION USE OF OFFICIAL FACILITIES AND SERVICES

#### 1. Union Office Space and Equipment:

a. Management will provide a key to the Union office to be placed at the front desk for the use of the Union Representative. The Union shall be responsible for the proper use and care of the facilities, services, and equipment provided in this Article.

b. The Union Representative will have access to the following equipment for official union use. Such access includes using equipment available to the Union Representative in their duty capacity:

(1) One (1) telephone with voice mail.

(2) One locking file cabinet.

(3) One (1) personal computer, laser printer, fax, and Local Area Network (LAN) drop with Internet access.

(4) Au NFFE FD1 IAMAW, AFL-CIO FL 2 e-mail account for communications with Bargaining Unit employees and between Union officers and the Employer.

(5) Inclusion on all LCS published phone rosters under the heading "NFFE Local."

(6) Inclusion in the TJAGLCS Dial-By-Name-Directory under the name "NFFE."

(7) Assign, posted at the assigned work station of the Chief Steward, which reads, "NFFE Local 2, Chief Steward."

(8) Parking

(a) A reserved parking space will be provided for the Union Chief Steward in the parking lot portion designated as X-1 convenient to his or her work area. The reserved space will be marked as "Reserved-NFFE Chief Steward."

(b) The LCS sponsors numerous short courses and conferences throughout the year, for which reserved parking spaces are assigned to distinguished visitors, speakers and attendees. Nothing in the agreement limits management's right to assign parking spaces on a short term basis

as necessary to accommodate these short courses. If special use of the parking space by visitors, speakers, and attendees of special functions makes the parking space for the NFFE Chief Steward virtually unusable, the Parties will revisit this provision at that time.

c. Conference Rooms: The use of conference rooms/auditoriums shall be requested through the normal channels established by the Employer with as much advance notice as possible of the desired time/date of use. Use of these facilities is subject to the priorities of the Employer and the Union will be treated in the same manner as other outside users.

d. Bulletin Boards: The employer agrees to provide access to a bulletin board in the School Support Section for the use by the Union. The Union shall be responsible for the posting of Union materials. Such material shall be approved by a responsible Union official, who shall determine that the material posted is accurate and neither scurrilous nor libelous in nature. All bulletin boards used by the Union shall be maintained in good order and all posted material will be Union Related Materials. All posted material will be professional, in good taste, nondiscriminatory, and appropriately civil and respectful.

e. Use of Government Equipment: The Union may make reasonable use of work place equipment for the performance of Union responsibilities.

(1) The Union will obtain prior approval from the Employer for any use Of Government photocopiers or printers that involves the production of 100 or more pages.

f. The LCS Library:

(1) The employer agrees to make available to the Union, to aid in fulfillment of Union responsibilities, use of the LCS library;

(2) The employer agrees to make available to bargaining unit members. The use of the LCS library for official purposes.

g. Subject to the provisions below, Union Officials will be authorized the use of the EC for internal union business for such purposes as information sharing and to send newsletters. This use may be done provided such document preparation, distribution and reading is done on non-duty time. All documents prepared which contain internal business topics will be transmitted with a message such as; "Contains internal union business information - document has been prepared and distributed on non-duty time. Reading and any subsequent action by the recipient must be done on non-duty time."

(1) The use of EC for conducting elections of union officers is permitted. The use of EC for advocacy or actual lobbying of Congress on conditions of employment

h. Management and the Union understand that the Union Representative, as an employee of the agency, will have access to an automated computer research service (currently Westlaw) through the Judge Advocate General's Corps restricted access web site, JAGCNet to the same extent as all other employees. Management agrees to make training on the computer research service available to the Union Representative along with other employees.

2. Mail Service:

a. The internal mail distribution service of the Employer shall be available for reasonable use by the Union.

b. For representational functions, the Employer will provide and pay for mail service including the United States mail and Express Mail service operated by the U.S. Postal Service, use of the United States mail under the indicia and certified mail, as well as any other mail service the agency utilizes. The name and local Union or the name and title of an Officer as well as their address will be placed on the top, left-hand side of the envelope.

3. List of Employees: THE LCS agrees to furnish to the Local Union annually on request an up-to-date list of employees covered by the Bargaining Unit showing name, position, title, FLSA code, and official duty station as requested by the Local. Additional information, will be furnished upon request on a case-by-case basis in compliance with the Privacy Act and case law.

## **ARTICLES 8**

### **COLLABORATIVE LABOR-MANAGEMENT RELATIONS**

1. Labor-Management Committees: The Local Parties may jointly agree to establish and use local Labor Management Committees in order to promote better communication between the Parties regarding specific topics and to address specific problems.

## ARTICLE 9

### GRIEVANCE PROCEDURE

1. Common Goal: The purpose of this Article is to provide a mutually acceptable method for the prompt resolution of grievances filed by the Parties and/or employees. The Parties agree that most grievances and complaints should be resolved in an orderly, prompt, and equitable manner that will maintain the self-respect of the employee and be consistent with the principles of good management and the public interest.

2. Definitions: Grievance means any complaint:

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

b. by the Union concerning any matter covered by this Collective Bargaining Agreement; or

c. by any B.U. employee, labor organization, or agency concerning -

(1) The effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

(2) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

3. Exclusions:

a. This grievance procedure does not apply to:

(1) Any claimed violation of 5 U.S.C. Chapter 73, Subchapter III, relating to prohibited political activities (Hatch Act);

(2) Retirement, life insurance, or health insurance;

(3) Suspension or removal under 5 U.S.C. 7532 (national security reasons);

(4) Any examination, certification, administered by Office of Personnel Management;

(5) Appointments;

(6) The classification of any position which does not result in the reduction in grade or pay of an employee;

(7) Reduction-in-force or furloughs of more than thirty (30) days;

(8) Separations during a probationary or trial period

a. For those matters that are grievable, this procedure shall be the exclusive procedure for the Parties and employees. However, nothing in this section shall prevent employees from exercising the option of using an alternate statutory appeals process such as the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or processing any prohibited personnel practice defined in law through the statutory appeal process, provided that the employee has not filed a grievance in writing on the matter in accordance with this Agreement. In the event an employee who has filed a grievance subsequently files a complaint or appeal through one of the statutory appeals processes, the complaint or appeal will be immediately cancelled. In the event the employee files a grievance after filing a complaint or appeal through one of the statutory appeals processes, the grievance will be cancelled.

(8) Resolution:

a. Grievance prevention: Most grievances arise from misunderstandings or disputes which can be resolved promptly and satisfactorily on an informal basis. In order to resolve issues that may result in grievances, potential grievants are encouraged to contact and discuss their concerns with the other party. However, such discussions prior to the start of the grievance process do not extend any time frames unless mutually agreed to in writing.

b. Management will cancel an employee's grievance at the employee's request, or upon termination of the employee's employment with the Agency, unless personal relief to the employee may be granted after termination of employment, or upon the death of the employee unless the grievance involves a question of pay.

5. Application: A grievance may be filed by an employee or a group of employees, by the Union, or by Management. Only the Union, or a Representative designated by the Union, may represent employees in such grievances. However, any employee or group of employees may personally present a grievance and have it resolved without representation by the Local Union provided that the Local Union will be given an opportunity to be present at all formal discussions regarding the grievance. Any resolution must be consistent with the terms of this Agreement. Upon request of either Party, the number of representatives at meetings concerning the grievance/complaint will be equal. Management will approve additional Union Representatives when reasonably appropriate. The Parties agree to keep the number of participants at the meetings to a necessary minimum.

6. Employee and Union Procedure:

a. Grievances taken in response to a written decision letter notifying the employee of an action under 5 U.S.C. 7512 (Adverse Actions) or 5 U.S.C. 4303 (Unacceptable Performance) must be filed in writing within thirty (30) days of receiving the decision letter as a Step 2 grievance. The action that is the subject of the grievance may be implemented pending processing of the grievance.

b. Grievances filed by the Union on behalf of an employee, a group of employees, or on behalf of the union itself, are subject to elevation directly to Step 2 or Step 3 of the grievance process by the LCS labor counselor based on the nature of the grievance, the remedy requested, the need to establish a record, and the appropriate level of authority necessary to address the grievance.

c. Alternative Dispute Resolution: The parties are encouraged to use a mutually acceptable ADR process that will facilitate resolution of problems.

d. Step 1:

(1) The grievance must be filed within 30 days following the date of the act or event that the employee or union believes created the problem, or the date the employee or union became aware of (or reasonably should have been aware of) the act or event. The grievance must be filed in writing by the grievant and/or the assigned Union Representative with the LCS labor counselor.

(2) The grievant will identify the issue(s) being grieved, provide any supporting evidence, and clearly state the relief requested. The management official deciding the grievance will examine the issues and conduct fact finding deemed necessary to understand the matter being grieved before issuing a decision, to include an oral presentation by the grievant if requested by the grievant. A written decision will be transmitted to the grievant and Union within 30 days after the written presentation of the grievance. These 30 days may be extended by mutual agreement of the management official and the grievant. Included within such decision shall be a statement indicating the grievant's right to submit the grievance to Step 2.

e. Step 2:

(1) If the grievant is dissatisfied with the decision issued in Step 1, the Grievant may, within 15 days of the date the decision was issued, request in writing to the LCS labor counselor that the grievance be elevated to Step 2 of the grievance process. If decision on the Step 1 grievance was not issued by the date required, the grievant may, within 15 days from the date the decision was due, similarly request in writing to the LCS labor counselor that the grievance be elevated to Step 2 of the grievance process.

(2) The written grievance will specify unresolved issues and the relief requested. Grievances beginning at Step 2 will include the information required under Step 1 above and a copy of any letter or document being grieved. The management official deciding the Step 2 grievance will examine the issues and conduct fact finding deemed necessary to understand the matter being grieved before issuing a decision, to include an oral presentation by the grievant if requested by the grievant. A written decision will be transmitted to the grievant and Union within 30 days after the written presentation of the grievance. These 30 days may be extended by mutual agreement of the management official and the grievant. Included within such decision shall be a statement indicating the grievant's right to submit the grievance to Step 3.

f. Step 3:

(1) If the grievant is dissatisfied with the decision issued in Step 2, the grievant may, within 15 days of the date the decision was issued, request in writing to the LCS labor counselor that the grievance be elevated to Step 3 of the grievance process. If a decision on the Step 2 grievance was not issued by the date required, the grievant may, within 15 days from the date the decision was due, similarly request in writing to the LCS labor counselor that the grievance be elevated to Step 3 of the grievance process.

(2) At Step 3 of the grievance process, the LCS Commander agrees to designate a Hearing Official to hear the grievance. The Hearing Official will conduct a hearing on the complaint filed by the grievant. A reasonable number of relevant, non-cumulative witnesses, as determined by the Hearing Official, may be called in support of the grievant's claim and in support of the managerial action or inaction at issue. The Hearing Official will render a recommendation as to the disposition of the grievance to the Activity Commander within 21 days following the close of the hearing. The Commander will issue a decision on the grievance within 15 days following receipt of the recommendation from the Hearing Official. The Commander may accept, reject, or modify the recommendation of the Hearing Official.

g. Step 4:

(1) If the grievant is dissatisfied with the decision given in Step 3, the matter may be referred to arbitration pursuant to Article 10.

7. Management Procedure:

a. The Activity Commander, or designee will file the grievance with the Union President off 2, within 30 days of the event giving rise to the grievance or

within 30 days of the date the Commander became aware of the event. The grievance will identify the issue(s) being grieved, identify the laws, rules, regulations and contract articles alleged to have been violated. The grievance may request an oral presentation.

b. The grievance will include the remedy requested.

c. The Union President or designee will issue a decision within 60 days of the receipt of the grievance.

d. Either party may refer a matter to arbitration in accordance with Article 10 if they are dissatisfied with the decision.

8. Time Limits: Time limits in this Article may be extended by mutual consent of the Parties. In the event that the grievance is mailed or sent by Electronic Communications (EC), the receipt date shall be the date of mailing plus three (3) days. The Parties agree to respond to the grievance within the timeframe allowed. However, if either Party is unable to file or respond within the time frames, the reason for the delay will be stated, and an automatic seven (7) day extension of the time limits will be granted. When Information is requested from a Party which is needed to process a grievance or determine if a grievance exists, the time limits will be extended equal to the amount of time required to receive the information. Failure by the grievant to meet time limits, or to request and receive an extension of time, shall automatically cancel the grievance, unless mitigating circumstances prevail. Failure of the responding official to meet time limits, or to request and receive an extension of time, shall constitute a denial of the grievance allowing the grievant to proceed to the next step in the grievance procedure or into arbitration as authorized in Article 10.

## ARTICLE 10

### ARBITRATION

#### 1. Arbitration:

a. If the final decision on a grievance processed under the negotiated grievance procedure is not acceptable, the issue may be submitted to arbitration. Arbitration may be invoked by either party, but not by individual employees. Arbitration shall extend only to disputes involving matters covered by the negotiated grievance procedure. Prior to invoking arbitration the parties may mutually agree to use ADR. ADR must be mutually invoked within 15 days after the step 3 decision has been rendered. If arbitration is then invoked, it must be invoked within 15 days after the end of the ADR process.

b. The request to refer an issue to arbitration must be in writing, signed by the President of the NFFE FD1, IAMAW, AFL-CIO FL 2 in the case of an employee/Union grievance; or the appropriate Management official in a grievance filed by the employer and submitted to the other Party within thirty 30 days following receipt of the decision by the aggrieved Party.

c. The Party invoking arbitration may opt to postpone the arbitration hearing date if that Party has filed an Unfair Labor Practice charge alleging information relevant to the case has been withheld until the FLRA has rendered its decision.

2. Where there are a number of grievances concerning the same issue, the Parties will Review the issue(s) and may mutually agree to combine the grievances.

3. **Selecting the Arbitrator:** Unless otherwise agreed, the invoking Party will submit a request within seven (7) days after invoking arbitration to the Federal Mediation and Conciliation Service and/or the American Arbitration Association for a list of seven (7) impartial persons qualified to act as arbitrator. Within fifteen (15) calendar days after receipt of such list, Management and the Local Union shall confer to select an arbitrator. If the Parties cannot agree on an arbitrator from the list, each Party shall strike one name in turn from the FMCS or AAA list. The determination of which Party shall strike first from the list will be determined by the flip of a coin. After each Party has struck three names from the list, the remaining person shall serve as the arbitrator. If the responding party fails to participate in the selection process, the invoking party will make a selection of the arbitrator from the list.

**4. Pre-Hearing Conference:** No later than 5 days prior to the arbitration the parties will meet to attempt to arrive at:

a. a statement of the issue(s) before the arbitrator. If the Parties are unable to jointly frame the issue(s), each party will submit its identification of the issue(s) to the arbitrator. The arbitrator will then frame the issue(s) he/she is to decide.

- b. joint exhibits
- c. stipulations
- d. a time to exchange witness lists.

5. Fees and Expenses:

- a. The cost of arbitration, including panel requests fees, arbitrator's fees and expenses shall be split evenly between the parties
- b. If a clarification of an arbitrator's decision is necessary, the requesting Party will pay for the additional arbitration fees and expenses. The arbitrator will be requested to complete the clarification within thirty (30) days. If jointly requested, the costs will be shared.
- c. An employee, who is found to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee, is entitled, on correction of the personnel action to receive reasonable attorney fees related to the personnel action, awarded in accordance with standards established under 5 U.S.C. 7701 (g).
- d. The arbitration hearing will be held, if possible, on Management's premises and during the regular dayshift hours. The grievant and any employee called as a witness will be excused from duty to the extent necessary to participate in the official proceedings with pay and travel expenses as authorized in Agency travel regulations. Questions raised as to whether a witness is necessary will be resolved by the arbitrator. If travel expenses would be incurred for a witness to attend a hearing, questions raised as to whether the witness is necessary, or whether alternative testimonial means (i.e. telephone) would suffice, will be resolved by the arbitrator prior to the hearing. An equal number of Union representatives, employed by THE LCS, will be entitled to official time, travel, and per diem expenses as there are Management representatives.

6. Authority:

- a. The arbitrator's authority is limited to the adjudication of issues which were raised in the grievance procedure. The arbitrator may also resolve issues such as the appearance of witness, and any matter which may be raised under §7114b, (4), of Chapter 71 of 5 U.S.C., provided the matter has not been raised under the ULP proceedings

The arbitrator shall not have the authority to add to, subtract from, or modify any of the terms of this Agreement, or any supplement thereto.

b. In considering grievances concerning actions based on unacceptable performance and adverse actions appealable to the Merit Systems Protection Board (MSPB), the arbitrator shall be governed by Section 7701(c) (1) of Title 5, United States Code, and, to the extent applicable, by the precedential decisions of MSPB.

7. Grievability/Arbitrability/ Timeliness Threshold Determinations: The arbitrator shall have the authority to make threshold determinations. Threshold questions shall be resolved by the arbitrator prior to the hearing on the merits of the grievance, unless otherwise agreed by the parties. Questions regarding timeliness will be determined using the "reasonably aware" standard. If requested by either Party, the threshold issue will be decided by an arbitrator different from the one selected to hear the merits of the case.

8. Arbitration Process:

a. The process to be utilized by the arbitrator may be formal or expedited:

(1) Formal hearing: A submission to formal arbitration hearing should be used when a formal hearing is necessary to develop and establish the facts relevant to the issue. In this case, a formal hearing is convened and conducted by the arbitrator.

(2) Expedited Arbitration:

(a) A stipulation of facts to the arbitrator can be used when both Parties agree to the facts at issue and a hearing would serve no purpose. In this case, data, documentation, etc., are jointly submitted to the arbitrator with a request for a decision based upon the facts presented.

(b) An arbitrator inquiry may be used to expedite the resolution of the grievance when a formal hearing is unnecessary. In this case, the arbitrator would make such inquiries as he/she deemed necessary, prepare a brief summary of the facts and render an on-the-spot decision with a summary opinion. The Parties may mutually agree to eliminate the summary opinion.

(c) Mini-arbitration: In this case, an oral hearing will be held. The arbitrator will prepare a brief summary of the facts and render a decision with a summary opinion. The Parties may mutually agree to eliminate the summary opinion.

b. The Parties may mutually agree to expedited arbitration or a formal hearing. If the Parties do not agree on the process, a formal hearing shall be held.

c. Upon selection of the arbitrator in a particular case, the respective representatives for the Parties will communicate with the arbitrator and each other in order to select a mutually agreeable date for the arbitration hearing. The Parties will endeavor to schedule the hearing within forty-five (45) days after arbitration is invoked. If the Parties are unable to mutually agree and schedule a hearing date within forty-five (45) days, the arbitrator will select a date.

d. If the arbitrator is not available within the timeframe, the Parties shall agree either to extend the time frame or select a different arbitrator.

e. The arbitrator will be requested to render the decision and remedy to the Parties as quickly as possible, but in any event, no later than thirty (30) days after the conclusion of the process as described above unless the Parties otherwise agree.

f. The arbitrator's decision shall be final and binding, unless an exception is filed with the Federal Labor Relations Authority. If no exception is filed, the arbitrator's decision and remedy will be implemented. An exception to the arbitrator's decision may be filed in accordance with FLRA regulations.

9. Exceptions: Either Party may seek judicial review of the arbitrator's decision on matters which could have been appealed to the Merit Systems Protection Board or the Equal Employment Opportunity Commission during the thirty (30) day period beginning on the date the award is served on the party.

10. Implementation of Arbitration Awards: Arbitration Awards will be implemented as soon as possible following the final decision. A decision is not considered final until all exceptions, if any, are resolved. To facilitate implementation of the Award, the Arbitrator, who heard the merits of the case, will retain jurisdiction until the Award is implemented.

**ARTICLE 11**  
**NEGOTIATIONS**

**1. Collaborative Issue Resolution:**

a. Partnership: The Parties are encouraged to use partnership to address issues which may arise during the life of this Agreement. At the election of either Party, negotiable subjects not covered by this Agreement which are not resolved through partnership may be addressed through the mid-term bargaining process contained in this Article.

b. Changes to Organizations: The parties agree that the right to determine or change organization within the LCS is a management right. However, in order to facilitate pre-decisional discussion and resolution of issues regarding changes to the organization, Management, as early as reasonably possible, will inform the Union about proposed changes to the organization which impact on the Bargaining Unit.

**2. Mid-term Negotiation:**

a. In the spirit of bilateral relationship, the Parties agree that changing conditions will create a need for both THE LCS and the Union to propose mid-term negotiations. In accordance with case law and applicable regulations, the Parties may propose negotiations on topics not otherwise covered by this Agreement.

b. If negotiations are requested for a negotiable matter, the Party requesting negotiation must specify the term or condition of employment that they claim is subject to negotiation. The Parties will meet and negotiate in a good faith effort to reach agreement with respect to the proposed changes to conditions of employment. In accordance with applicable case law and regulatory guidance, management may implement changes in conditions of employment, not in conflict with this Agreement, within a reasonable period of time after providing the Union with notice and an opportunity to negotiate regarding the proposed change.

c. In accordance with case law and regulatory definitions, management agrees that it will not unilaterally implement negotiable changes in personnel policy or practices or conditions of employment, including those originating from terms of dispute settlement agreements. The parties recognize that in emergencies or when the date of implementation is required by law this sub-section may not be applicable.

**3. Disputes and Impasses:**

a. Disputes: If Management believes a written Union proposal is nonnegotiable, it will raise the issue of negotiability as early as practicable in the negotiations

after becoming aware of the issue. Upon written request from the Union, Management will provide the Union with a written statement of the rationale for a claim of non-negotiability. The Union may submit a negotiability appeal to the FLRA in accordance with applicable rules and regulations.

b. Impasses: In the event of an impasse either Party may invoke mediation, and if mediation is unsuccessful, may request the Federal Services Impasses Panel (FSIP), in accordance with applicable guidelines and regulations for filing such claims, to consider the matter, or by mutual agreement, may refer the matter to binding arbitration in accordance with Article 10.

4. Past Practices are clear, consistent, long-standing policies that are known about and accepted by both management and the union. Past Practices shall remain in effect unless the Union is given notice and an opportunity to negotiate changes.

## **ARTICLE 12**

### **PRE-NOTIFICATION FOR UNFAIR LABOR PRACTICE CHARGE**

1. The Parties agree that prior to filing an Unfair Labor Practice Charge (ULP), the charging Party will serve written notice of the alleged ULP Charge on the other Party. If the charged Party requests the opportunity to discuss the issue(s), the Parties will attempt resolution within five (5) working days unless more time is mutually agreed to.
2. The Parties will have full authority to mutually agree to any procedures necessary for resolution.
3. Reasonable amendment of the ULP charges on the same issue will not necessitate a new pre-notification of said charges.

## **ARTICLE 13**

### **ORIENTATION OF EMPLOYEES**

1. Representatives of the Union will be granted official time, normally not to exceed thirty minutes, in order to welcome new employees who are members of the Bargaining Unit and to explain the Union's role at the LCS.

a. This meeting with new employees will be done only with the agreement of the new employees.

b. The Union representatives will be permitted to give to the agreeable new Bargaining Unit employees a welcoming packet containing brochures and other Union materials.

## ARTICLE 14

### POSITION DESCRIPTION AND CLASSIFICATION

1. The parties agree that any matter relating to the classification of any position which does not result in the reduction in grade or pay of an employee is removed from the obligation to negotiate.
2. Each employee shall have a position description which is accurate as to title, series, and grade, and clearly states major duties which are reflected in performance elements. A position description is deemed to be accurate when the principle duties, knowledge requirements, and supervisory relationships are described. The position description shall be reviewed annually by tire employee mid the rating supervisor.
3. New or Revised Position Descriptions:
  - a. When an employee is assigned additional major ongoing duties not reflected in his/her position description, Management will revise the position description to reflect the changes in accordance with Section 1 above.
  - b. When a new position description has been approved and classified, the supervisor and the employee will review and discuss said position description and how it relates to performance expectations under Article 15.
4. Position Description Review/Classification Procedure: Any employee who feels that their position description does not accurately reflect the duties they are performing, or that the position description is otherwise inaccurate may make a written request to their immediate supervisor that the position be reviewed. The employee shall make a summary of the inaccuracies and/or additional duties not described. Discussion with the supervisor and a determination by the supervisor on whether or not to submit a new position description will be concluded within sixty (60) days of the employee's request for review. After discussions with the employee, if the supervisor believes the position description is inaccurate, the supervisor will prepare a new position description will be prepared and submitted for classification. In conducting such reviews, the supervisor will consider the employee's written and oral comments. If the employee believes the position description is still inaccurate after the review, he/she may grieve only those matters listed in the applicable regulations, and in accordance with those same regulations.
5. Position Classification Review/Appeal Procedure: When the accuracy of position description has been established under Section 3, and the employee believes their Position is not properly classified as to title, series and/or grade, the employee may use the OPM Classification Appeal procedures outlined in 5 CFR 511.101 et. seq.
6. Noncompetitive Promotions: If a review of a position or position description reveals that there has been an accretion of duties which would result in the classification of a

position at a higher grade, Management may decide either to eliminate and/or redistribute the grade-controlling duties or the employee will be promoted per Article 16.7. If Management eliminates and/or redistributes the grade controlling duties, the employee will be advised of this decision within 14 days of the completion of the review. If Management temporarily needs to have these higher graded duties remain with the employee past the 30 days, then the employee will receive a non-competitive temporary promotion, if otherwise eligible. Such temporary promotion will be effective no later than the start of the pay period after the 30 days. If Management decides to promote the employee, he/she will be promoted at the beginning of the first pay period after the position has been classified at the higher level. In the event the promotion is delayed, Management will inform the employee of the reason for the delay

## ARTICLE 15

### PERFORMANCE MANAGEMENT SYSTEM

#### 1. Preamble:

a. This Article is intended to convey and emphasize major features of THELCS Performance Management Program (PMP) as described in 5 CFR430, DODD 1400.25M, and Army Regulation (AR) 690-400. In so doing, the Parties agree that all provisions of this Article are intended to be consistent with the PMP, and where there is an apparent inconsistency, the regulations applicable to the PMP govern. The establishment and content of performance expectations set forth in individual Performance Plans are not negotiable under 5 U.S.C. 7106 (a)(2)(A) and (B).

b. Management and the Union recognize the right and obligation of Management to evaluate the performance of employees in accordance with Chapter 43 of Title 5, United States Code, 5 CFR 430, DOD 1400.25M, and AR 690-400, and other applicable government regulations.

2. Performance standards and elements must be consistent with the duties and responsibilities contained in the employee's position description. They must permit the accurate evaluation of the job performance. To the greatest possible extent, objective criteria will be used. They must be applied fairly and equitably.

#### 3. Performance Elements and Standards:

a. While responsibility for establishing final performance elements and standards is a management right, management will seek employee input while developing those elements and standards. It is the rating supervisor's responsibility to ensure that performance elements and standards are developed and communicated in writing to the employee annually, no later than thirty (30) days after the rating period begins. The performance elements and standards shall be documented on the appropriate form and signed by the appropriate management official. If the employee signs or initials the form, this only means that the employee has received a copy and is aware of its contents.

#### 4. Review and Rating:

a. Normally, the rating supervisor will be an individual with administrative authority to rate the employee and who has knowledge of the employee's work performance.

b. A rating supervisor should take into consideration time spent on official time activities when evaluating an employee's level of productivity and timeliness.

c. Ratings: The rater will rate their employees in accordance with DODD 1400.25M, AR 690-400 and other applicable regulations and guidance.

d. Expectations for meeting each standard must be communicated to the employee. Performance elements and standards must be in effect for at least one hundred and twenty (120) days before an employee's performance can be evaluated using those elements and standards.

e. If, at any time during the rating year, the rating supervisor assesses an employee's performance as failing to meet expectations the rating supervisor shall promptly initiate action intended to bring the employee's performance to a successful level by issuing a letter documenting what element(s) are not being met and stating ways for the employee to more satisfactorily perform duties at expected levels. Any discussions between the rating supervisor and the employee regarding actions taken to improve performance will be documented, and a copy of the documentation given to the employee.

f. Employee's Response to Ratings: Employees may make a brief written response to the rating. Responses should be limited to performance accomplishments during the rating period and performance-related issues the employee feels should be included as part of the rating of record. The responses must be signed and dated by the employee. The rating supervisor will acknowledge receipt by initialing and dating the employee response. If an employee is dissatisfied with their evaluation, the employee may grieve that determination through the negotiated grievance procedure.

#### 5. Applications:

a. The application of the performance standards and elements will be done in a fair and equitable manner.

b. The rating given employees shall be fair and equitable and prepared in accordance with the following:

(1) Informal progress reviews should occur as needed between the rating supervisor and employee to discuss key accomplishments, potential performance problems, or changes to performance expectations. One formal progress review shall take place during the appraisal period. The progress review with the employee will be done in private, during the midpoint of the appraisal. The review will be documented on the appropriate form.

(2) The rating of record will be documented on the appropriate form and include, to the extent feasible, supporting documentation.

#### 6. Rating Period:

a. The rating period will run for a pre-established 12 month period with appraisals given no later than 30 days after the end of the rating period unless the employee:

(1) Has not been in the same position under the same rating supervisor and under an established performance plan for one hundred and twenty (120); or

(2) Is performing under a performance improvement plan (PIP); or

(3) Is in a temporary position whose appointment will expire, or will be separated from his/her current position, within ninety (90) days of the end of the rating period.

b. In such cases, the rating of record will be given within thirty (30) days of the conclusion of the event, unless the employee is pending removal for disciplinary or performance issues.

7. If formal meetings on the Performance Management Plan (PMP) and the application of this Agreement to the PMP are conducted for employees, the Union will be given notice and an opportunity to participate.

8. Withholding a Within-Grade Increase (WGI):

a. Level of competence determinations will be made in accordance with 5 CFR 531.4, Subpart D, and applicable government regulations.

b. Unless the employee is under a Performance Improvement Plan (PIP) or management notice (in the case of marginal performance) at the time they are otherwise eligible to receive a WGI, advancement to the next higher step of the employee's grade shall be automatic when the employee has:

(1) Completed the waiting period;

(2) Not received an equivalent increase during the waiting period;

(3) The current rating of record is successful; and

(4) Management has not postponed the WGI pursuant to applicable government-wide regulations.

c. In situations where an employee is working under a PIP when they would be otherwise eligible to receive a WGI, the WGI determination will be postponed until the end of the PIP. A WGI determination will be made and conveyed to the employee within ninety (90) days after the end of the PIP. If the WGI is granted, it will be effective retroactively back to the WGI eligibility date.

d. The effective date of all WGIs will be established in accordance with 5CFR 531, et. seq.

e. Notification of a negative acceptable level of competence for purpose of withholding a WGI will be processed in accordance with 5C.F.R.531, et seq.

f. An employee may request reconsideration of a negative determination by filing, not more than fifteen (15) days after receiving notice of determination, a written response to the negative determination setting forth the reasons. This request shall be filed with the reviewing official. Management shall reconsider the determination. When a negative determination is sustained after reconsideration, an employee shall be informed in writing of the reasons for the decision and of his/her right to grieve the decision. The grievance will begin at Step Three (3) within twenty-one (21) days after the employee receives the reconsideration decision letter since the reconsideration decision is considered the equivalent of Step Two (2) in the grievance procedure. The grievance rights will be described in the reconsideration decision letter.

g. The employee may choose to have Union representation in requesting reconsideration and/or filing a grievance subject to the limitations described in 5 CFR 531, Subpart D.

## ARTICLE 16

### MERIT PROMOTION

1. Management may make selections for vacancies from any appropriate source. The procedures in this Article apply only to positions where the incumbent will be covered by the Bargaining Units.

2. Vacancy Announcements:

a. The local Bargaining Unit members will be alerted by email to all permanent positions that are announced as vacancies, the incumbent of which will be in the Bargaining Unit, except for:

(1) Lateral reassignments

(2) Voluntary demotions

(3) Demotions for disciplinary, performance reasons or RIF

(4) Mandated placement such as those:

(a) Ordered by a third party such as MSPB, EEOC or an Arbitrator.

(b) Agreed to in the settlement of a grievance, appeal before MSPB or an EEO complaint

(5) Entry-level clerical and technical, GS-3 and below positions. However, management will publicize any such job announcement internally for the same time and in the same manner in which it is publicized for the area of consideration.

(6) Other positions, where the Local Parties mutually agree to an exception.

b. Summaries of job vacancies will be posted on [www.usajobs.com](http://www.usajobs.com) within the area of consideration. Complete vacancy announcements can be obtained from [www.usajobs.com](http://www.usajobs.com) and [www.cpol.army.mil](http://www.cpol.army.mil). Vacancy announcements shall contain:

(1) The announcement number

(2) Opening date

(3) Closing date

- (4) Title, series and grade
- (5) Tour of duty if other than permanent full time
- (6) Organizational location
- (7) Summary of the duties and responsibilities
- (8) Qualification requirements
- (9) Selective placement factors
- (10) The known promotion potential of the position, if any
- (11) Area of consideration
- (12) Method of evaluation
- (13) Application instructions
- (14) Non-discrimination statement.

c. If a position is announced as temporary and the announcement does not state that it may become permanent, the position will be re-announced if it becomes permanent.

3. Selection officials will consider the list of properly referred candidates

a. Qualification requirements and selective placement factors for positions to be filled through merit promotion shall be job related as reflected in the Position Description.

b. Promotion procedures in this Article will apply to selection of candidates by transfer, reinstatement, or promotion to a higher grade position than previously held or to a position with known promotion potential higher than the promotion potential of a previous position.

c. Upon request, the Local Union will be notified when a panel, board, team or group with subject matter expert(s), etc. is being used to consider a vacancy subject to this Article. Upon request, when investigating a potential grievance, the designated Local Union representative will be provided evaluation scores and evaluation factors or criteria.

d. For other than entry-level positions and positions filled through the Merit Promotion Plan, Management will provide the Local Union representative, notification of the person, position, grade, and location of the position filled.

#### Promotion Factors:

(1) Determination of factors, methods and forms to be used in the evaluation, ranking, and selection of candidates shall be in accordance with applicable statutes, government-wide regulations and agency regulations.

(2) Upon request, the subject employee will receive a copy of any formal written recommendation given by the employee's supervisor regarding the employee's potential promotion.

e. Selection: The selecting official is entitled to select from among any of the candidates on a merit promotion certificate. The selecting official may also elect not to fill the position from the merit promotion certificate.

f. Non-selected Employee's Rights: An employee's rights for information areas contained in The Regional Merit Promotion Plan.

g. Management will furnish data pertaining to the filling or non-filling of vacancies, following a Union request and in accordance with the procedures and restrictions outlined in 5 U.S.C. 7114(b) (4) and the cases interpreting that provision.

#### 4. Career-Ladder Promotions:

a. The Union and Management are committed to establishing a career ladder review program within the TJAGLCS utilizing the following process:

(1) Management agrees to review positions within the LCS to determine if any would be appropriate for career ladder positions. Within 30 calendar days of receipt of any written Union proposal to establish a career ladder position, Management agrees to consider and respond to the Union's recommendation.

(2) If and when Management decides to establish a career ladder position, Management will establish a career ladder plan for that position. As part of that plan, Management will develop the objective criteria an employee must meet for each grade level in order to be promoted. The development and evaluation of the objective criteria are within the sole discretion of Management. A copy of the plan will be given to each employee upon entry into the career ladder and when he/she is promoted to a new level of the career ladder. The employee will also be advised of his/her earliest date of promotion eligibility.

b. Competitive procedures are not applicable for career promotions when competition was documented at an earlier stage. Except as provided below, employees within a career ladder will be promoted to the full performance level as soon as they have met the time-in-grade requirements and have met the fully

successful requirements of their current grade and the next higher grade into which they are being promoted. If management's review leads to the conclusion that the employee's work does not warrant a promotion or that other circumstances exist which may delay a promotion, management will provide a 30 day written notice to the employee before the employee is eligible for the promotion. The notice will explain where the employee's performance is lacking and advice as to what the employee must do to bring their performance to the fully successful level. If delays are for reasons other than performance, they will be explained in the advance notice.

5. Re-promotion Rights: This section applies for up to two years from the date of demotion. It does not apply to involuntary demotions due to performance or conduct.

a. If Management determines to fill the same position, and unless a contrary decision is supported by good cause, the employee will be offered re-promotion, to the position or to intervening grades. Good cause is determined by applicable case law and includes, but is not limited to, management's decision to select a better qualified candidate from any appropriate source. The employee will retain re-promotion rights to the grade level from which demoted. For other vacancies within the commuting area with the same or equal duties for which an involuntarily demoted employee qualifies, the employee will be considered for re-promotion to the vacancy.

6. Temporary Promotion: A qualified employee placed in a higher graded position or assigned to a group of duties that have been properly classified at a higher grade, for thirty (30) consecutive days or more, will be temporarily promoted into that position and paid accordingly. Management will not rotate vacant positions for the sole purpose of avoiding a temporary promotion. Temporary promotions of over one hundred twenty (120) days will be filled through competitive procedures.

7. Noncompetitive Promotion: When there has been an accretion of duties and responsibilities to warrant an increase in grade, the employee in the position will be promoted, subject to applicable law and regulation, unless Management eliminates or Redistributes the grade-controlling duties, in accordance with Article 14.5. Management shall refrain from temporarily reassigning an employee's work during the position classification review if the purpose for reassigning the work is to avoid reclassification of the said employee's position. Accretion of duties occurs when the following conditions are met:

- a. The employee was performing the grade-controlling functions that are in the new position;
- b. The major duties of the former position are absorbed into the new position (not necessarily all major duties);

- c. The classification of other positions within the organization is not adversely affected;
- d. The new position is not a reclassification from non-supervisory to supervisory, when the supervisory duties constitute the sole basis for upgrading the position.
- e. The new position has no known further promotion potential.

#### 8. Details:

a. A detail is the temporary assignment of an employee to a different position or to a different set of duties for a specific period, with the employee returning to his/her regular duties at the end of the detail, as the employee continues to be the incumbent of the position from which detailed.

b. Detail may be used to meet emergencies or situations occasioned by abnormal workload, changes in mission or organization, training, absences of personnel. Details will be based on Management needs in the interest of economy and efficient and effective employee utilization. Management may document details of thirty (30) days or less. Details in excess of thirty (30) days will be documented in the employee's Official Personnel Folder (OPF) and copies of the record forwarded to the employee. Details in excess of thirty (30) days require prior approval of Management. An employee may be excused from a detail assignment if the assignment would cause undue hardship, as determined by management.

c. For details to Bargaining Unit positions within THE LCS, the following mechanism will apply:

(1) Employees detailed to a higher graded position for thirty (30) consecutive days or more will be temporarily promoted in accordance with Section 6 above.

(2) When management determines the need for a detail for over one hundred twenty (120) days, chooses to fill the position noncompetitively, and has determined that there are two (2) or more qualified employees within the competitive area at the same grade level as the detail position, management will rotate assignments at least every one hundred twenty (120) days unless legitimate job related reasons, as determined by management, or travel/per diem costs require otherwise.

(3) The rating supervisor of the detail will complete an Appraisal in accordance with AR 690-400 and other applicable regulations.

d. The stipulations in Section 8 above will apply to details to other agencies except that the LCS will request an evaluation accompany the employee upon

return. The LCS rating supervisor will consider it in the employee's annual performance appraisal.

9. Noncompetitive Appointment Authority: Management agrees that where noncompetitive appointment authority is exercised, management will identify the program or authority by which the appointment is made.

## ARTICLE 17

### AWARDS PROGRAM

1. The Parties agree that the employee suggestion, incentive, and performance Award Programs are beneficial to both Management and the employee. The Awards Program will be administered in accordance with 5 CFR Parts 451, 430, and 531, and AR672-20. The Parties mutually agree that safety, productivity, efficiency, and public service will receive emphasis in the Awards Program.
2. Employee Recognition: An award is something bestowed or an action taken to recognize and reward individual or team achievement that contributed to meeting organizational goals or improving the efficiency, effectiveness and economy of LCS operations or is in the public interest. Awards Programs will be equitable in opportunity and there must be fairness in the distribution of awards. All employees will be given an equal opportunity to work at a level sufficient for award eligibility. AR672-20 details the types and standards of awards that may be bestowed on employees.
3. Management will consider scheduling an appropriate presentation of an award if requested by the employee.
4. Management will provide annually a list of awards given to Bargaining Unit employees by the LCS upon request by the Local Union. This will include type of award, monetary amounts, and additional information consistent with the Privacy Act.
5. Whenever possible and appropriate, and in accordance with applicable Army, DOD and government-wide regulations, management may seek employee input regarding the type of recognition the employee will receive. For example, an employee may be offered the opportunity to select from several kinds of non-monetary keepsakes for length of service recognition, or to select a time off award in lieu of monetary spot award. Once granted, time off awards cannot be converted to a cash payment.
6. The Parties recognize that awards to Union Officials for performing representational duties are not appropriate. This does not preclude an employee who is an Official of the Union from receiving recognition, including cash awards, for special acts.
7. Management agrees to provide the union representative with a list of proposed awards for bargaining unit members prior to approval by the Commanding General. The list of awards will only include the type of award, monetary amounts, and other information consistent with the Privacy Act, 5 U.S.C. § 552a. The Union Representative will be given five (5) workdays to provide any comments or input on the awards in writing. Management agrees to provide the Union Representative's written comments or input, if provided, to the Commanding General along with the proposed awards. The decision to grant or deny an incentive award lies solely within the discretion of the Commanding General or his/her designated approval authority.

## ARTICLE 18

### WORK SCHEDULES

#### 1. Tours of Duty:

a. If no other workweek has been established, the standard workweek for fulltime employees will consist of five (5) consecutive eight (8) hour days (40 hours per week). Days off will normally be two (2) consecutive days. When Local management knows in advance, it will give employees at least ten (10) calendar days written notice before changing tours or shifts, except for situations in which the activity determines that the LCS would be seriously handicapped in carrying out its functions and that costs would be substantially increased (See 5 C.F.R. § 610.121). Management has the right to set the duty day for all employees.

#### 2. Alternative Work Schedules (AWS):

a. The Parties agree that AWS, which are flexible and compressed work schedules, have the potential to improve productivity in the Federal Government and to provide greater service to the public. The Parties agree they will be used at the LCS according to the guidelines and approved schedules below and pursuant to 5 USC 6120-6133, 5 CFR 610.401, Subpart D, the OPM Handbook on Alternative Work Schedules, and DODD 1400.25-M. Under no circumstances will an AWS combine the unique attributes of flexible and compressed schedules.

b. Employees interested in working an AWS must file a written request with their supervisor stating the type of AWS they would like to work and why. The Employee must also be prepared to address the impact the AWS will have on the LCS. Management will consider the Employee's request, as well as alternate potential AWS which the Employee might work, to include additional discussions with the Employee where appropriate. Management will decide whether or not the employee's job responsibilities are compatible with the requested, or alternate, AWS.

#### c. Approved AWS and Definitions:

(1) Variable day schedule means a type of flexible work schedule containing core hours on each workday in the week and in which a fulltime employee has a basic work requirement of 40 hours in each week of the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday within the week within the limits established for the organization.

(2) Variable week schedule means a type of flexible work schedule containing core hours on each workday in the biweekly pay period and in

which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established for the organization.

(3) Maxiflex schedule means a type of flexible work schedule that contains core hours on fewer than 10 workdays in the biweekly pay period and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established for the organization.

(4) 5-4/9: A compressed schedule: During one pay period, the employee works eight (8) nine-hour days, one (1) eight-hour day, and gets one day off. The day off is determined in advance when the AWS is approved, although it is subject to occasional change when properly requested and scheduled with the immediate supervisor. Credit hours are not earned.

(5) 4-10: A compressed schedule. Employee works four (4), ten-hour days per week with one day off. The day off is determined in advance when the AWS is approved, although it is subject to occasional change when properly requested and scheduled with the immediate supervisor. Credit hours are not earned.

(6) Gliding schedule means a type of flexible work schedule in which a full-time employee has a basic work requirement of 8 hours in each day and 40 hours in each week, may select a starting and stopping time each day, and may change starting and stopping times daily within the established flexible hours.

d. Guidelines:

(1) Recognizing that all offices must be adequately staffed, all employees have the right to apply for any approved AWS in Section 2.b. Management has the authority to disapprove an individual request when the position requires a particular schedule. Management shall not require employees to use AWS, except as required in Subsection (2) below.

(2) Any limitation to AWS listed in Section 2.b. must be negotiated at the local level. The application of AWS to any employee requesting AWS will be determined by management in consultation with the requesting employee. The employee may request union representation during such consultation.

(3) When an employee requests a particular schedule and the request is denied, the employee and Local Union will receive a written explanation

of the denial within a reasonable time. The employee or the Union has the right to grieve the denial in accordance with Article 9.

(4) Upon two weeks written notice, Management can change a previously approved AWS based on work related objectives. Any modification or changes or cancellation of AWS to meet the work objectives of any unit must be based on the following criteria:

- (A) Productivity;
- (B) Level of direct or indirect services furnished to the public;
- (C) Cost of operations other than reasonable administrative costs;
- (D) Changes in mission needs or requirements; or
- (E) Any misuse whatsoever of the AWS by the employee.

(5) Management will not adjust employees' AWS for the purpose of avoiding overtime or other premium, or extra compensation.

(6) Core time means the time periods during the workday, workweek, or pay period that are within the tour of duty during which an employee covered by a flexible work schedule is required by the agency to be present for work. Core time for employees will be determined exclusively by management on a case-by-case basis.

(7) The LCS will not use the three (3), 13-hour day compressed schedule.

(8) Alternate work schedules shall normally not begin prior to 0600 hours nor extend beyond 1800 hours. Exceptions based on requirements of the nature of the work may be negotiated by the employee and management.

(9) Management may make short term changes in AWS that are necessary to accomplish work objectives. These changes must be administered fairly and equitably. As much as practicable, the Union will be notified of the changes in advance.

(10) Employees approved to use 5-4/9 will select, with supervisor approval, their "off" day when the AWS is initially approved. Where a holiday, designated by statute or Executive Order falls on the employee's "off day," the employee is entitled to an 'in-lieu-of' day for that holiday. The employee and their supervisor will coordinate when the "in-lieu-of" holiday is taken. Where "59 minutes" is granted to employees on the AWS employee's "off day," the AWS employee is not entitled to compensatory time or any other reimbursement for that 59 minutes.

(11) No intimidation, coercion, or threats may be placed on employees by Management, the Union, or other employees over this matter. An employee may grieve a denied request for an AWS or the cancellation of an AWS.

(12) Subject to the duty of negotiate, individual AWS agreements will contain a provision for an acceptable method of recording time and attendance.

(18) So long as Management applies the criteria listed in this Article and in referenced Guidelines in a fair and equitable manner, granting AWS for one employee in no way obligates Management to grant it for another employee nor does it establish a Past Practice for other employees, or for a successor in a particular position.

4. Rest Breaks: Authorized rest breaks, not to exceed 15 minutes approximately midway through each 4-hour period of the 8-hour workday, will be arranged by the employees with management, as needed, so as not to interrupt the work of the organization. Additionally, a 15-minute rest period is authorized within each consecutive 4-hour period of overtime worked.

5. The Local Parties may negotiate provisions for use of overtime when requested by either Party.

6. Compensatory Time. Compensatory time off is time off with pay in lieu of overtime pay for irregular or occasional overtime work (defined as work that is not part of an employee's regularly scheduled administrative workweek). Under the flexible work schedule program, compensatory time is time off with pay in lieu of overtime pay for regularly scheduled or irregular or occasional overtime work.

a. There is no limit on the maximum number of hours of compensatory time an employee may accumulate. However, compensatory time must be used by the end of the 26<sup>th</sup> pay period after it is earned or it will be paid to the employee at the overtime rate at which it was earned.

b. Employees have no right to earn compensatory time. If an employee wishes to work and earn compensatory time, they must submit a properly completed DA Form 5172-R (Appendix B) and this request must be approved by management before the compensatory time is worked. Compensatory time will be recorded on the employee's time card pursuant to appropriate agency regulations.

c. Employees who work compensatory time without specific prior approval of management, do not earn compensatory time.

d. Eligibility

(1) General Schedule employees whose basic rate of pay is equal to or less than the maximum rate of a GS-10 may request compensatory time off in lieu of overtime payment.

(2) Only employees exempt from the Fair Labor Standards Act (FLSA) whose rate of pay exceeds the maximum rate of grade GS-10 may be required to take compensatory time off in lieu of receiving overtime payment.

(3) For an employee to receive compensatory time off in lieu of paid overtime, the employee must request it in writing on OPM Form 71.

7. When not specifically prohibited by law an employee may be excused from their duties without loss of pay or charge to leave when the absence is not specifically prohibited by law and satisfies at least one of the following criteria:

- a. the absence is directly related to the department or agency's mission;
- b. the absence is officially sponsored or sanctioned by the head of the department or agency,
- c. the absence will clearly enhance the professional development or skills of the employee in his or her current position; or
- d. the absence is brief and is determined to be in the interest of the agency.

#### 8. TELEWORK:

Telework-also referred to as telecommuting, flexiwork, and flexiplace is an alternative work arrangement for employees to conduct all or some of their work away from the primary workplace. Section 359 of P.L. 106-346 requires each Executive Agency to establish telework policies under which eligible employees may participate to the maximum extent possible without diminishment of employee performance and mission accomplishment. Employees at THE LCS will be permitted to take part in telework as agreed between the parties as follows:

- a. The Telework program will be managed consistent with the rules and regulations of the Office of Personnel Management, as well as policy and guidance provided by DoD, to include the DOD Telework Policy and the DOD Telework Guide.
- b. Positions eligible for telework are those involving tasks and work activities that are portable, do not depend on the employee being at the traditional worksite, and are conducive to supervisory oversight at the alternative worksite. Positions shall not be excluded as eligible on the basis of occupation, series, grade, or supervisory status.

(1) An employee suitable for telework is an employee whose demonstrated personal characteristics are well suited to telework, as determined by the supervisor, including, as a minimum: demonstrated dependability and the ability to handle responsibility; a proven record of high personal motivation; the ability to prioritize work effectively and utilize good time management skills; and a proven or expected minimum performance rating of "fully successful."

(A) The Parties agree that specific individual participation in the telework program must be considered on a case-by-case basis.

(B) A flexible work place arrangement may also be used on an occasional or ad hoc basis, for individual days or hours within a pay period, or for a special assignment or project on a short term basis (two consecutive weeks or less). For example, such work tasks may include: data analysis, writing or reports; telephone intensive tasks such as obtaining or collecting information, following up on customers or setting up a conference; and some computer oriented tasks such as data entry and word processing. Typically, such tasks require uninterrupted concentration and result in measurable work outputs or products.

(C) A flexible workplace arrangement may be appropriate to accommodate an employee with a temporary or permanent illness or disability, if the job otherwise meets the eligibility requirements for Teleworking and can be accomplished at an alternate site, and the employee is capable of performing the job at home or at a telecommuting center but cannot commute to and/or from work on a daily basis. If the request to participate in the flexible work place program is for medical reasons, the employee may be required to provide acceptable medical documentation.

(D) Employees placed on a Telework program will sign a Telework Agreement that outlines the terms and conditions of the arrangement (Appendix C, DOD Sample Telework Agreement). The Telework Agreement will contain language that outlines the work requirements and technical capabilities the employee will maintain, as well as the circumstances where the employee can be ordered to work at the LCS on a Telework Day.

(2) Positions generally not eligible for telework are those positions involving tasks that are not suitable to be performed away from the traditional worksite, including tasks that: require the employee to have daily face-to-face contact with the supervisor, colleagues, clients, or the general public in order to perform the job effectively, which cannot otherwise be achieved via email, telephone, fax, or similar electronic

means; require daily access to classified, confidential or sensitive information; requires frequent use of specialized equipment or technology that is available only at the official duty station; or are part of trainee or entry level positions. The following Employees are not eligible for participation in the telework program:

- (A) Employees on leave restriction;
- (B) Employees on performance improvement plan;
- (C) Employees who have received any disciplinary or adverse action in the twelve (12) months prior to the request to participate in the telework program, where the disciplinary or adverse action would adversely impact the integrity of the telework program or the LCS.

(3) The LCS may terminate an employee's participation in the program for cause, such as:

- (A) Failure to continue to meet the criteria detailed above, to include maintaining appropriate connectivity with the workplace;
- (B) Failure to adhere to the provisions of the Agreement;
- (C) Failure to accurately and truthfully report time worked;
- (D) Organizational exigencies that impact on the mission of the Employer, and require the employee to perform work at the official duty station;
- (E) For misconduct
- (F) Verifiable information that has been shared with the employee indicating customer dissatisfaction with the employee's performance or conduct.

e. An employee wishing to participate in the Telework Program will submit a written request to their supervisor. The request will comply with the DOD Telework Policy (<http://www.telework.gov/policies/dodpolicy.asp>) and the DOD Telework Guide (<http://www.telework.gov/policies/dodguide.asp>) and will address with specificity all the criteria and requirements for telework listed in this agreement and in the DOD Telework Policy and the DOD Telework Guide. Additionally, the employee will describe how they will be able to accomplish their work from a telework location and what kinds of support they require from the LCS.

f. Under no circumstances is the LCS obligated to incur any expenses associated with Telework. For example, the LCS is not obligated to provided computers, chairs, telephone lines, special equipment, utility supplements, phone cards, etc. To the extent that the LCS does elect to provide equipment for Teleworking, the employee will use such equipment only for official purposes, and will provide the LCS access to the equipment upon request.

## ARTICLE 19

### PAY AND PER DIEM

#### 1. Pay:

- a. Management agrees to provide accurate and timely reports of time and attendance for pay purposes to the Defense Finance and Accounting Service (DFAS), and to assist any employee who does not receive their proper pay on time.
- b. Back Pay: Interest on back pay awards to employees shall be paid in accordance with current law.

#### 2. Per Diem:

- a. Employees in travel status will receive the per diem rates established in the Federal Travel Regulations for that geographic area.
- b. Travel Charge Card: Participation of Bargaining Unit employees in the program is subject to provisions of the Travel and Transportation Reform Act of 1998 (Pub. L. 105-264), 37 U.S.C. 411 and 1001, Federal Travel Regulations, Joint Travel Regulations, GSA Regulations, DOD Directive 5154.29, Agency Regulations, and any subordinate agreement(s) between the National Parties. The Agency will make every effort to process travel vouchers in a timely manner and resolve Agency-caused problems relating to travel claims. Upon the employee's request, Management will provide a letter to the Credit Bureau regarding an employee's negative credit report due to delay in reimbursement of authorized travel expenses through no fault of the employee.
- c. Advances: Under normal conditions, Management will plan trip assignments far enough in advance so that if the employee needs a travel advance, sufficient time will be available to request and receive the advance to use on the assigned trip.
- d. Reimbursement for Telephone Calls to Home While in Travel Status:

(1) In accordance with the Joint Travel Regulations, employees in a travel status are authorized to make brief phone calls home to advise of the employee's safe arrival, to inform or inquire about medical conditions, and to advise regarding changes in itinerary. Normally these phone calls should be no more than ten (10) minutes long.

3. Travel Pay: Employees shall be compensated for travel time as authorized under 5 CFR. 551, FLSA and other applicable government wide, Department of Defense and Department of the Army regulations. Normally, employees will not be expected to travel

without being eligible for compensation. However, if the employee is expected to travel on government business without entitlement to compensation, they will be notified in advance and provided the reason(s).

## ARTICLE 20

### LEAVE

a. Annual leave shall be earned, accrued, and requested in accordance with appropriate statutes and regulations. An employee is entitled to request and be granted all earned annual leave, subject to the right of management to approve the time at which leave may be taken. All requests for annual leave must be submitted in advance using OPM Form 71.

b. An employee whose personal religious beliefs require the abstention from work during limited periods of time will be granted annual leave (or compensatory time off, LWOP) upon request for such periods as required by Title VII of the Civil Rights Act of 1964, as amended.

c. An employee will be granted annual leave or leave without pay (or credit hours, compensatory time off, LWOP) if requested in case of death of a family member. A limited amount of sick leave may also be used (see Section 2.c. below). Management will make every effort to grant annual leave or leave without pay in case of death of other relatives or friends.

d. Employees requesting annual leave will file a written request three days prior to the date the leave is to be taken. Managers will act on the request and inform the employee as soon as practicable and no later than 24 hours following the request.

#### 2. Sick Leave:

a. Employees will earn and accrue sick leave in accordance with applicable statutes and regulations. Employees have a right to use all earned sick leave provided sick leave is used for its intended purpose. Management has the right to request and review medical documentation to substantiate absences requested as sick leave in accordance with 5 C.F.R. 630.403.

b. Sick leave may also be granted when the employee provides care for a family member as a result of physical or mental illness; injury; pregnancy; childbirth; or medical, dental, or optical examination or treatment. The amount of sick leave that can be used is defined by law and regulation (e.g. 5 CFR 630.401).

c. Sick leave can also be used to make arrangements necessitated by the death of a family member or attend the funeral of a family member. The amount of sick leave that can be used is defined by law and regulation (e.g. 5 CFR 630.401).

d. The use of sick leave is appropriate when the employee would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease.

e. Employees may use sick leave when they must be absent from duty for purposes relating to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

f. Employees can be granted up to 7 days of administrative leave in a calendar year to serve as a bone-marrow donor, or up to 30 days of administrative leave to serve as an organ donor, in a calendar year in addition to sick or annual leave.

g. For annual and sick leave, the definition of family member means the following relatives of the employee:

(1) Spouse, and parents thereof;

(2) Children, including adopted children and spouses thereof;

(3) Parents;

(4) Brothers and sisters, and spouses thereof; and

(5) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

h. An employee shall file a written application for sick leave at least one day in advance for purposes of receiving medical, dental, or optical examinations, and as early as practicable when sick leave is used to take a family member for similar examinations. Employees who are incapacitated from performing their duties will notify their supervisor of their request for sick leave as early as practicable and no later than two hours of the start of their duty day (e.g. 5 CFR 630.401(a)(2)& 630.402)

### 3. Advance Sick Leave

Supervisors have the discretion to grant up to 30 days of Advanced Sick Leave per year to full-time employees with a medical emergency, serious disability, illness, or confinement for childbirth or adoption. Employees requesting Advanced Sick Leave must submit the request on an OPM Form 71, specifying the number of hours requested, and the amount of time it will take to earn back the Advanced Sick Leave. An employee may be advanced up to 5 days of Advanced Sick Leave to care for a child who is ill. A father may be advanced up to 5 days of Advanced Sick Leave to care for his wife who has recently given birth and is incapacitated. Requests for advanced sick leave will

normally be granted in accordance with governing regulations when all of the following conditions are met:

- a. all of the employee's available sick leave has been exhausted;
- b. the employee is eligible to earn sick leave;
- c. the employee's request does not exceed 240 hours, or for temporary employees only the amount to be earned during the period of temporary employment if appropriate;
- d. there is no reason to believe the employee will not return to work after having used the leave, and the employee has sufficient funds in his or her retirement account or any other source of monies owed to the employee by the Government to reimburse the Employer for the advance, should the employee not return to work;
- e. the employee has provided acceptable medical documentation of the need for advanced sick leave.
- f. Consideration should also be given to requiring the employee to use any annual leave that might otherwise be forfeited.

#### 4. Family and Medical Leave:

- a. By reference, the provisions of the Family Medical Leave Act and the policies of its implementing regulations are incorporated into this Agreement (e.g. 5 U.S.C. 6381 - 6387 and 5 C.F.R. 630, subpart L).
- b. Eligible employees are entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for one or more of the following reasons.
  - (1) The birth of a son or daughter of the employee and the care of such son or daughter.
  - (2) The placement of a child with the employee for adoption or foster care.
  - (3) The care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition.
  - (4) A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.
- c. Requests for, and entitlement to, leave under the Family Medical Leave Act are governed by applicable government wide and agency regulations.

d. An employee may elect to substitute paid time off for any or all of the period of leave taken as provided for in 5 CFR 630.1205

#### 5. Military Leave:

a. Military leave is approved absence from official duty, for a civilian employee who is a member of a Reserve Component of the Armed Forces or National Guard. Military leave is authorized for days in which the employee is ordered to active duty or inactive duty training. 5 U.S.C. 6323 (a) provides 15 work days (120 hours) per fiscal year for active duty, active duty training, and inactive duty training. An employee can carry over a maximum of 15 days into the next fiscal year.

b. If an employee is called on duty as a member of the National Guard or the Reserves and has used all his/her military leave, he/she may be granted leave without pay upon request or may be granted annual leave if he/she desires.

#### 6. Administrative Leave or Excused Absence:

a. Administrative leave may be granted to employees for participation in activities in accordance with government wide, Department of Defense, and Army regulations.

b. Administrative leave may be granted when the activity shuts down due to circumstances beyond Management's control for short periods of time. Instances involving unusual snowstorms, floods, excessive heat, lack of heat or electricity, breakdown of equipment, and similar events may be covered by this type of administrative leave. It is management discretion to authorize the use of Administrative Leave in such situations.

c. Supervisors have the discretion to excuse infrequent absences and tardiness of less than an hour on the part of the employees. Each case shall be considered on its merits.

d. Administrative leave of three (3) hours shall be allowed to attend the funeral of an LCS co-worker killed in the line of duty.

e. The Commander of the LCS retains absolute and complete discretion to grant or not grant administrative leave to employees (often referred to as "the 59-Minute Rule). Under no circumstances will the granting of administrative leave become a past practice, the changing of which requires notification or negotiation. An employee who is otherwise absent from the workplace (e.g. leave, sick leave, etc.) when the 59-Minute Rule is invoked is not entitled to early dismissal or other "in-lieu-of" time on some other day.

## 7. Leave Without Pay:

a. Leave without pay (LWOP) is a temporary non-pay status and absence from duty that, in most cases, is granted at the employee's request. In most instances, granting LWOP is a matter of supervisory discretion and should be granted only when the interests of the government are best served.

b. Employees who do not have leave to their credit and wish to take leave for emergencies or other necessities maybe granted leave without pay upon request and in their supervisor's discretion. Leave without pay shall be granted upon request to disabled veterans needing medical treatment fora service connected disability, to reservists and National Guard personnel for military duties, or to eligible employees invoking the Family Medical Leave Act Leave without pay may also be granted on an extended basis while

c. Employees understand that LWOP affects their entitlement to or eligibility for certain Federal benefits

## 8. Court Leave:

a. Court leave is a leave of absence from duty without loss of pay or charge to annual leave to perform jury duty in a Federal, state, or municipal court or to serve as a witness in a judicial proceeding to which the United States, the District of Columbia, or state or local government, is a party. Court leave can only be granted for those days and hours the employee would otherwise be in a pay status. Employees who are called for jury duty shall be granted court leave and shall submit jury duty pay to THELCS, except the employee may retain payment received for expenses. In every instance, the employees may fulfill the citizenship responsibilities of jury duty. Management may, if jury duty will substantially interfere with the program of work, petition the court to excuse the employee.

b. Employees summoned in cases involving only private parties may request annual leave or leave without pay.

9. Management has the right to implement changes to an individual employee's leave request policy as part of corrective or disciplinary action.

## ARTICLE 21

### ACTIONS BASED ON UNACCEPTABLE PERFORMANCE

1. Consistent with Chapter 43 of Title 5 of the United States Code, 5 C.F.R. 432, and AR 690-400, and other applicable regulations and agency directives, action for unacceptable performance will be handled in the following manner:

a. Performance Improvement Period: Prior to initiating an action to remove or downgrade an employee, the employee must be given in writing:

(1) At any time during the performance appraisal cycle that an employee's performance is determined to be unacceptable in one or more critical elements, the LCS shall notify the employee of the unacceptable performance and inform the employee of the performance requirements or standards that must be attained in order to demonstrate acceptable performance. The LCS will afford the employee a reasonable opportunity to demonstrate acceptable performance.

(2) Information as to how the supervisor will assist the employee in that effort.

(3) Information as to what the employee must do to bring performance to acceptable level in that period.

(4) Regular re-evaluation of the employee's performance during the period.

(5) The specific time frame that the improvement period will be in effect, not to be less than ninety (90) days.

(6) Normally within fourteen (14) days after the end of the performance improvement period, the employee will be notified in writing whether the employee's performance is at least at the minimally acceptable or unacceptable level.

(7) Once an employee has been afforded a reasonable opportunity to demonstrate acceptable performance, management may consider any appropriate action, to include removal, reduction-in-grade, or reassignment if there are appropriate vacancies.

b. Notice of Proposed Action: An employee whose reduction in grade or removal is proposed is entitled to at least thirty (30) days advance written notice which informs the employee:

(1) Of the nature of the proposed action;

(2) Of the specific instances of unacceptable performance by the employee on which the proposed action is based;

(3) Of the critical elements of the employee's position involved in each instance of unacceptable performance;

(4) The time to reply;

(5) the right to be represented by a NFFE FD1 IAMAW, AFLCIO Representative, an attorney, or other representative, so long as the representation would not cause a conflict of interest;

(6) The right to make an oral and/or written reply and to receive a written decision with appeal rights.

c. Decision: Management will consider any answer by the employee and/or the employee's representative before making a decision regarding the proposed action. Unless proposed by the head of the agency, the decision will be concurred with by an official who is in a higher position than the official who proposed the action.

2. The decision letter to an employee stating that action under this Article will be taken will inform the employee of the option to appeal the action to the Merit Systems Protection Board or through the negotiated grievance procedure, but not both, and will inform the employee that he/she will be deemed to have exercised his/her option to raise the matter under one procedure or the other at the time the employee timely files a written grievance or files a notice of appeal under the applicable MSPB procedures. The decision letter shall include the time limits (number of days) to appeal under the negotiated grievance procedure and the Merit Systems Protection Board appeals procedure.

3. If the employee is the subject of a removal action based on unacceptable performance but the removal is based on reasons apparently caused by a medical condition, and the employee is eligible, the employee or the LCS may file for disability retirement in accordance with applicable regulations.

## ARTICLE 22

### ADVERSE ACTIONS BASED ON MISCONDUCT

1. Consistent with Chapter 75 of Title 5 of the United States Code, 5 C.F.R. 752, and AR 690-700, and other applicable regulations and agency directives, adverse actions based on misconduct will be handled under the provisions outlined in this Article.

2 General: Management and the Union agree it is important that the supervisor/employee relationship encourage early recognition and resolution of conduct that could lead to disciplinary action.

3. Traditional Discipline: -

a. Discipline is defined for the purposes of this Article as any action taken against an employee based on misconduct committed by the employee that results in a letter of reprimand, suspension without pay, reduction in pay or grade, or removal from THELCS.

b. Disciplinary actions against employees must be based on just cause, consistent with applicable laws and regulations and be fair and equitable.

c. The Union and Management agree that the broad objective of discipline is to motivate employees to conform to acceptable standards of conduct and to prevent prohibited activities.

d. The Douglas factors, detailed in the case Douglas v. Veterans Administration 5 M.S.P.R. 280 (1981), will be used in determining appropriate penalties for misconduct.

4. Inquiry:

a. Prior to issuing a letter of reprimand or a notice of proposed disciplinary action, the official issuing the letter or notice, or his/her designee, shall undertake a preliminary inquiry to obtain pertinent facts relating to the disciplinary situation. The inquiry, where appropriate, will include a discussion with the affected employee.

b. During the course of an inquiry or an investigation, the affected employee(s) or Union may inquire about the status at any time. Management will promptly respond to these inquiries.

c. The employee may be represented by the Union. Employees of the unit are entitled to request Union representation at all formal discussions related to the potential disciplinary action and upon request must be given a reasonable opportunity to secure a representative. Once management has been notified that

the Union is representing the employee(s) in reference to a specific matter, Management will notify the Representative of any additional meetings with the employee(s) relevant to that specific matter. This notification will allow reasonable time for the Representative to attend the meeting(s). Where the employee has requested Union Representation in a potential disciplinary action, a copy of any correspondence to the employee from Management will also be provided to the Union Representative in a timely manner.

d. When disciplinary action is initiated, it will be within a reasonable time period after the incident in question, or after Management knew or reasonably should have known of the incident. Management will not allow instances of misconduct to continue solely for the purpose of increasing the severity of a potential penalty.

#### 5. Procedures:

##### a. Letter(s) of Reprimand:

(1) Letter(s) of reprimand will be clearly titled, and sufficiently specific to indicate why the letter is being issued and what the employee can do to improve or take needed corrective action. The employee will be advised of his/her grievance rights. The letter will advise the employee that the reprimand will be retained in the Official Personnel Folder for a period not to exceed three (3) years. The subject employee may request that the letter be removed earlier than the period stated based on a reasonable period of demonstrated improved behavior.

(2) Employees will be made aware in the letter of reprimand that another copy will be retained in the agency's official disciplinary case file.

##### b. Provisions Common to All Disciplinary Cases Taken Under 5 CFR 752:

(1) In the event an employee is issued a notice of proposed disciplinary action, that employee must be afforded and made aware of all the rights and privileges due him/her and shall be given the opportunity to review the evidence that supports the charges.

(2) The employee and/or representative will be granted a reasonable amount of official time to prepare an answer to any proposal. Arrangements for use of such time will be made in accordance with the provisions of Articles 4 and 5.

(3) At management's discretion, time limits for the employee's response may be extended upon written request.

c. Suspension of 14 Days or Less: In addition to Section 5.b. above, the following applies to an individual in the competitive service who is not serving a

probationary or trial period under an initial appointment or who has completed one (1) year of current continuous employment in the same or similar positions under other than a temporary appointment limited to one (1) year or less. Such an employee is entitled to:

- (1) At least seven (7) days advanced written notice stating the specific reasons for the proposed suspension;
- (2) A reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;
- (3) Be represented by a NFFE FD1IAMAW, AFL-CIO Representative, an attorney, or another representative;
- (4) A written decision and the specific reasons, therefore, at the earliest practicable date;
- (5) Grieve the decision, if adverse, through the negotiated grievance procedure contained in Article 9. The written decision shall advise the employee of this right. If the employee chooses to use the negotiated grievance procedure, he/she must represent him/herself or be represented by the Union.

**d. Removal, Suspension for More than 14 Days, Furlough without Pay for 30 Days or Less, or Reduction in Pay or Grade:** In addition to Section 5.b. above, the following applies to an individual in the competitive service who is not serving a probationary or trial period under an initial appointment, or who has completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less; and a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions. Such an employee is entitled to:

- (1) at least thirty (30) days advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;
- (2) A reasonable time, never less than seven (7) days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;
- (3) Be represented by a NFFEFD1 IAMAW, AFL-CIO representative or an attorney or another representative;
- (4) A written decision and the specific reasons, therefore, at the earliest practicable date; and

(5) the decision letter will inform the employee of his/her option to appeal the action to the Merit Systems Protection Board or through the negotiated grievance procedure, but not both, and will inform the employee that he/she will be deemed to have exercised his/her option to raise the matter under one procedure or the other at the time the employee timely files a written grievance or files a notice of appeal under the applicable MSPB procedure.

e. Nothing in this Article limits Management's right to immediately bar an employee from the workplace and place that employee on administrative leave where Management deems the employee is a danger to the workplace.

6. Action by the Deciding Official:

a. After carefully considering the evidence and the employee's response, if any, to include aggravating and mitigating factors, the deciding official shall decide:

(1) to withdraw the proposed action;

(2) To institute a lesser action; or

(3) To institute the proposed action.

7. Cautionary Situations: Letters of warning (any letter that addresses a performance or conduct problem with the exception of Letters of Reprimand) will state the specific reasons that gave rise to the letter. The above notices will inform the employees of their grievance rights. A letter of warning can be retained by the initiating supervisor in a confidential non-permanent file. A copy of the letter shall be given to the employee to whom it is directed.

## **ARTICLE 23**

### **EQUAL EMPLOYMENT OPPORTUNITY**

#### 1. Equal Opportunity:

a. Management and the Union will cooperate in providing equal opportunity for employment, training, and promotion and will not discriminate because of age, race, gender, religion, color, national origin, sexual orientation, marital or familial status, disability, lawful political affiliation, or other non-merit factors. The Parties agree to cooperate in providing equal opportunity for all employees in the implementation of THE LCS and Union programs.

## ARTICLE 24

### EMPLOYEE ASSISTANCE PROGRAM

#### 1. General:

- a. The LCS shall maintain an employee assistance program meeting the requirements of applicable laws, regulations, and guidelines found in Public Laws 91-616 and 92-255. Nothing in this Article limits Management's right to impose disciplinary action where appropriate.
- b. Employee participation in the program shall be voluntary, though supervisors shall make every effort to refer an employee to EAP where the supervisor reasonably believes participation in the program could assist the employee in maintaining acceptable levels of performance or conduct on the job. Failure of a supervisor to advise employees about EAP services shall not impede a supervisor's ability to take action under Articles 21 and 22.
- c. An employee may request a Union Representative at any discussion in connection with this Article.
- d. Management will publicize programs under the Employee Assistance Program on official bulletin boards or electronic bulletin boards.

#### 2. Policy:

- a. The Parties acknowledge that the employee has the primary responsibility to maintain acceptable performance and conduct and for taking any actions or treatment necessary to maintain it. When an employee sincerely seeks treatment in order to maintain or regain acceptable performance or conduct, Management will provide assistance, create an atmosphere of understanding, and attempt to remove the effects of social stigma associated with the problem.
- b. Where appropriate management will attempt to provide employees with the appropriate assistance to overcome problems which contribute to poor performance or conduct.

#### 3. Responsibilities and Guidelines:

- a. When a supervisor, through daily job contact, observes that an employee is experiencing difficulties in maintaining his/her job performance, the supervisor will discuss the apparent difficulties with the employee.
- b. If the employee is unable to correct his/her job performance difficulties through his/her own efforts, and management believes the deficiencies are related to a problem which might be resolved through services provided by the Employee

Assistance Program, management will refer the employee to the Employee Assistance Program.

c. Corrective discussions by supervisors will focus on the issues of job performance or conduct and possible job-related consequences.

d. Supervisors will address conduct or performance problems which evidence emotional problems, impaired judgment, alcohol or drug abuse, as medical problems in an effort to assist the employee in getting rehabilitation. An employee who refuses professional help or is unable to improve his/her performance or conduct with the assistance of a medical rehabilitation program may be subject to disciplinary action or separation. Under no circumstances does a medical problem excuse misconduct or poor performance nor does a medical problem preclude the imposition of appropriate disciplinary or performance based measures, subject to the requirements of the Rehabilitation Act.

e. Supervisors shall consider the guidance of the referral sources in establishing reasonable expectations for recovery time of an employee.

f. Participation in EAP shall not jeopardize an employee's job security or his/her opportunity to compete for promotion. However, participation in EAP alone, excuse misconduct or poor performance, nor does participation in EAP preclude the imposition of appropriate disciplinary or performance based measures, to include removal or the denial or promotion where appropriate.

g. Sick leave is an appropriate form of leave for treatment or counseling sessions.

h. Management may hold a disciplinary action in abeyance if the employee enters an appropriate rehabilitation program and permits the counselor to report to management on the employee's attendance in the program, and if the employee is making observable progress in conduct and/or performance on the job.

4. Confidentiality: The confidential nature of records associated with an employee's participation in EAP shall be maintained. No release of information will be made by any Party without the employee's written consent, except as provided by Law.

## ARTICLE 25

### SAFETY AND HEALTH

1. General: The parties mutually agree to cooperate in common efforts to create and maintain a safe and healthy workplace, and safe and healthy working habits and conditions to minimize accidents, and to prevent lost work time due to illness or injury. A safety and health program will be administered in accordance with Executive Order 12196.
2. Workplace Security: Workplace facilities occupied on a regular basis will have a written workplace security plan. Each plan, notwithstanding national direction on workplace security will be developed by management to meet local filttlatioos but, as a minimum, must address the following:
  - a. occupant emergency plans;
  - b. physical security plan;
  - c. workplace violence plan;
3. Safety and Health Inspections: Management will conduct an annual safety and health inspection of facilities that are regularly used. Management will provide the Union with a copy of any report resulting from the inspection.
4. Health and Safety Policies. Management will, to the extent feasible, provide safe and sanitary working conditions and equipment, in consonance with standards promulgated for federal workplaces under the Occupational Safety and Health Act of 1970 (OSHA). In consonance with 29 C.F.R. 1960, et seq., Management shall post notices informing employees of the protections and obligations provided for in the OSHA.
5. Management agrees to provide adequate sanitary facilities, water, and indoor environmental conditions (including lighting, heating, relative humidity, ventilation, air quality, and absence of pests, airborne pathogens and irritants) in work areas in accordance with applicable OSHA laws and regulations. If it is determined that sanitary facilities, water, indoor environmental conditions and/or space are not adequate to protect the health and safety of an employee in any work area, corrective action will be taken to the extent feasible. In leased facilities, such corrective action will be requested of the lessor in accordance with the terms of the lease.
6. Management will, to the extent feasible, eliminate identified safety and health hazards as defined by applicable OSHA laws and regulations. Whenever such conditions cannot be readily abated, Management shall inform the Union so the Union can provide input and recommendations in arranging a timetable for abatement, including a schedule of interim steps to protect employees. Arrangements can include notifications, warnings, relocation of employees, if needed, information to employees exposed to the hazardous

conditions, and other steps the Parties may agree are necessary under the circumstance, such as holding informational meetings with affected employees.

7. The Parties, in the course of normal duties, shall encourage employees to work safely and to report any observed unsafe or unhealthy conditions to the employee's immediate supervisor. Stewards and other representatives of the Union, in the course of performing their normally assigned responsibilities, are encouraged to observe and report unsafe practices, equipment, and conditions, as well as environmental conditions in their immediate areas which may represent health hazards. The Local Parties are encouraged to work together to resolve issues related to employee health and safety as they arise.

8. On-The-Job Injury or Illness: Employees shall report to their supervisor all injuries or occupational illnesses which occur on the job. When an employee files a claim with the Office of Workers Compensation (OWCP), management shall expeditiously process and forward to OWCP all documentation required which is within the agency's control when an employee alleges an on-the-job injury or contracts an occupational disease. At the employee's request, copies will be sent to his/her doctor, the NFFEFD1 IAMAW, AFL-CIO Local or other personal representative of the employee. In accordance with applicable regulations, management agrees to provide employees with assistance in processing claims under the Federal Employees Compensation Act (FECA).

9. When employees are temporarily unable to perform their regularly assigned duties because of documented and confirmed workplace illness or injury, but may be capable of returning to or remaining in a duty status, Management will consider detailing such employees to work assignments management determines to be available and compatible with the employee's physical condition, or temporarily tailor the employee's regularly assigned duties to the physical limitations to the extent Management determines such changes are feasible and warranted.

10. Where documented medical evidence shows the work environment is contributing to a medical problem, Management will make every reasonable effort, required by law and regulations, to place the employee in a suitable environment to protect the employee's health.

11. Video Display Terminals: Continuous operation of VDTs over extended periods of time may cause physical problems. Therefore, VDT operators will be provided periodic breaks away from the terminal during their work day. Ergonomic furniture and preventive devices such as wrist braces can be provided when identified in an approved Job Hazard Safety Analysis and when requested by the employee. A pregnant employee may request temporary assignment which does not require extended use of the VDT.

12. Occupational Health and Safety Training: Management recognizes the need for training and orientation regarding Occupational Health and Safety to ensure employee safety, and a minimum loss of work time due to injuries. Management will inform all employees of safe working habits and practices appropriate to their job. Additionally,

supervisors will instruct employees in safe working habits, practices, and procedures in regard to specific job assignments.

13. Accidents: For workplace fatalities and/or serious accidents to an employee the following procedure will be followed:

- a. No release of the name of the affected employee to the media or public will be made until next of kin has been notified.
- b. The Union will be notified as soon as practicable.
- c. OSHA will be notified in accordance with applicable regulations.

14. Pursuant to 5 USC 7114(b) (4), the Union can request copies of all reports and investigations related to health and safety at the LCS.

15. **Union Safety Representative:** When the LCS sponsors formal OSHA-type training locally, the Union designee will be included in the training if he/she has not had recent training of this type.

## ARTICLE 26

### REDUCTION IN FORCE

#### 1. Policy:

a. The decision to conduct a reduction in force (RIF) is a Management right. The implementation of a RIF will be administered by Management. To minimize the adverse impact of a RIF on employees, and to the extent the LCS has input into the particular RIF process, LCS Management will accomplish goals otherwise achieved by a RIF, through attrition and/or cost reduction efforts whenever feasible before conducting a RIF. As a matter of policy in cases of budgetary insufficiency, and to the extent the LCS has input into the particularly RIF process, LCS Management will consider other methods of cost reduction, to the extent feasible and not prohibited by law, before implementing a RIF. Such methods might include every possible method of controlling discretionary expenditures such as:

- (1) innovative salary saving methods, e.g., leaving positions vacant to save salary costs, promotion freezes, offering leave without pay, furloughs;
- (2) Reduction of costs associated with contracting-out;
- (3) Reduction of costs incurred related to volunteers;
- (4) Reduction of expenses associated with travel, conferences, seminars, institutes, office furnishings, and purchases of supplies and equipment.

b. Management will make the maximum effort to waive qualifications and place employees in vacant positions to avoid RIF. It will also offer to surplus employees their rights under the Department's Priority Placement Program or any other government-wide placement program in effect.

2. Recognizing the LCS' interest in protecting and representing employees, Management will give NFFE FD! IAMAW, AFL-CIO FL 2 the opportunity to negotiate on the adverse impact and procedures to be used in a RIF, in accordance with 5 U.S.C. 7106 and applicable case law and to keep NFFE FD! IAMAW, AFL-CIO FL 2 informed of RIF developments.

3. Management will request authority for early-out retirements in a RIF from the appropriate authority.

#### 4. Notice:

a. Management will notify the Union and give them a copy of the request for approval for RIF. This notification will be given as soon after it is submitted as is reasonably practicable. Retention Registers will be made available to the Union as soon as they are received

b. Following a union request, Management shall provide the Union a list of all positions which are considered trainee or developmental for reduction in force purposes, together with the SF-50 showing name, position and effective date of action assigning each incumbent to the position in question.

5. The affected employees will be given specific advance notice at least sixty (60) days prior to the effective date of the RIF action. Retention Registers and other RIF documents will be made available to the affected employee.

6. If negotiations are requested on a negotiable RIF matter that is not otherwise contained in or covered by this agreement, the Parties will meet or otherwise communicate at reasonable times on a timely basis and bargain in a good faith effort to reach agreement. If issues remain unresolved, either part may immediately request mediation. Should mediation fail to resolve those issues, the Federal Service Impasses Panel may be notified.

7. Management will give consideration on a case-by-case basis to requests from employees who have received RIF notices, for leave without pay (LWOP) up to a maximum notice period of ninety (90) days of combined duty and leave status, following issuance of the notice, if such an extension will protect employee rights or avoid administrative hardship. Management may also consider requesting approval from OPM for an extension beyond ninety (90) days where necessary to protect employee rights or to avoid administrative hardship. If the employee does not accept an offer of another LCS assignment, such LWOP may be canceled.

8. Personnel Files: Both the Union and Management will encourage each employee affected by the RIF to see that his/her personnel file is up-to-date as soon as the RIF or reorganization is announced. Management will take all steps necessary to insure that the affected employees' personnel file is accurate. Management will make all reasonable efforts to match employees with vacancies. Employees possessing skills in more than one area will designate those area(s) in which they wish to be matched for consideration for vacancies.

9. When THELCS determines that a RIF is necessary, a hiring freeze may be implemented during the life of the RIF for the competitive area and competitive levels involved in the RIF.

10. Definition of Competitive Areas and Competitive Levels:

a. It is a Management Right establish the competitive areas. The Union shall be afforded an opportunity to negotiate, to the extent permitted by law, the impact and implementation of the competitive areas.

b. The Parties agree that OPM regulations and guidance fully define how the competitive level is determined.

c. In accordance with OPM guidelines, Management may waive qualification standards of a position if the employee could meet the qualifications within 365 days of occupying the position.

11. Reemployment Rights: Any employee separated through reduction in force, and who properly registers for inclusion on the reemployment priority list, will be offered reemployment to the first vacancy which management determines to fill in the same competitive area that the employee qualifies for at the same or lower grade, in accordance with 5 C.F.R. 352. If more than one separated employee is qualified for a particular vacancy, the offer will be made in accordance with the reemployment priority list, 5 C.F.R. 330, Subpart B. If reemployment is below the employee's former grade level, the employee will have re-promotion rights as provided in this agreement.

12. Re-promotion Rights: If Management determines to refill a position previously eliminated due to a RIF, the previous incumbent, involuntarily demoted, will be offered re-promotion to the position or to the appropriate intervening grade. The employee will retain re-promotion rights to the grade level from which demoted. For other reestablished positions within the competitive area with the same or equal duties for which an involuntarily demoted employee qualifies, the employee will be offered re-promotion to the vacancy unless there is a legitimate job related reason for not re-promoting the employee. In the event that more than one employee qualifies, the highest service computation date ranking employee will be offered re-promotion first.

13. Management will offer affected eligible employees enrollment in the following placement assistance programs operated by other agencies for which they are qualified:

a. The DOD Priority Placement Program (PPP) for permanent employees in surplus positions administered by OPM and other government-wide programs.

b. LCS Reemployment Priority List;

c. The Department of Labor Job Training Partnership Act programs.

## ARTICLE 27

### TRAINING

1. General: The Parties recognize the value of a well-trained workforce and the need for a well-planned and conducted training effort. The Parties agree that training efforts are to be aimed at improving job performance, providing for career development, or meeting LCS needs as determined by Management. The Parties further mutually agree to encourage employee self-development.

2. Scheduling: Recognizing the need for flexibility, Management retains the right to schedule and assign employees to training, determine the investment to be made in schedule training so that employees will not have to travel on weekends. For those employees enrolled in work-related classes not scheduled by Management, Management agrees to make a reasonable effort to enable an employee to adjust his/her work schedule if feasible, in order to attend.

#### 3. Union Training and Official Time

a. The Parties agree that the Bargaining Unit Representative can request official time to enable elected Union Officials to attend Union training. The Parties agree that all training will include emphasis on such things as: developing statutory and technical knowledge, mediation skills, Interest-Based Negotiation skills, conflict resolution techniques, contract language intent, partnership development as well as like type sessions that are mutually beneficial to the Parties in promoting effective labor management relations. Training involving matters related to internal union management, administration or business is not appropriate for official time. Agendas for such training will accompany the request for official time provided by this Article such that management can make an informed decision regarding the granting of official time.

b. Nothing in the current agreement mandates that management approve any particular training opportunity for the Union Representative. However, management agrees to be reasonable in deciding requests for official time for training, and the Union agrees to be reasonable in making such requests.

c. Union officials requesting official time for training may also request travel and per diem expenses in accordance with applicable FLRA decisions.

4. Expenses: Management agrees to consider reimbursement of expenses incurred by an Employee in attendance at Management-approved, work-related courses on his/her own time. Any particular decision by Management to approve one employee's request for reimbursement will not establish a past practice.

5. Within sixty (60) days of the effective date of the Collective Bargaining Agreement, management will permit the Union to hold training for Bargaining Unit members on the Collective Bargaining Agreement during duty hours.

a. LCS will grant official time for the training.

b. The amount of official time for the voluntary training will not exceed two non-consecutive hours, will be at a time when duty demands are the least pressing, and will be coordinated with the LCS labor counselor.

c. The training will be by invitation and completely voluntary.

## ARTICLE 28

### FURLOUGHS

1. This Article sets forth procedures which will be followed if Management determines it necessary to furlough career employees because of lack of work or funds, or other non-disciplinary reasons. The decision to furlough is a management right protected from collective bargaining 5 U.S.C. 7106 (a) (2) (A). A furlough is the placing of an employee in a temporary, non-duty, non-pay status because of lack of work or funds, or other non-disciplinary reasons.

2. Absent circumstance beyond the LCS control, Management will notify the Union of a proposed furlough fifteen (15) days before the employees are notified. At the time, Management will advise the Union of the reason for the furlough, the number, names, titles, series and grade of all employees affected, and the measure which Management proposes to take to reduce the adverse impact on employees. The employees will be given specific notice (30 days' notice for furlough of less than 30 days, 60 days for furloughs in excess of 30 days).

3. Furlough documents will be made available to the affected employee and to the Union.

4. Upon being notified of a proposed furlough, the Union will propose topics for impact and implementation bargaining within seven (7) days, or waive any such negotiations. Examples of topics appropriate for impact and implementation bargaining include but are not limited to:

- a. the content of furlough notices;
- b. the content of solicitation of volunteers for furlough;
- c. scheduling of consecutive or nonconsecutive furlough days;
- d. programs for counseling employees about furloughs and unemployment compensation, benefits, etc.
- e. provisions for keeping the Union informed of furlough developments;
- f. any impacts on Union representation during the furlough;
- g. the process for recall from furlough.

5. Whenever possible, furloughed employees shall have the option to choose continuous furloughs instead of sporadic furloughs, so as to qualify for unemployment benefits.

6. Furloughs For More Than Thirty (30) Days: Management will not fill a vacant position, except by internal placement, when an employee on furlough in the same competitive area is qualified and available for a position at the same or lower grade from which furloughed.

7. Identification of Furloughed Employees: will occur in accordance with applicable government-wide regulations and OPM guidance.

8. Recall of Employees from Furlough: When Management recalls employees to duty in the same competitive level within one Bargaining Unit from which they were furloughed, it will be in order of service computation date ranking starting with the longest RIP service computation. Recall from furlough for placement in other competitive levels is determined by the qualifications availability, and service computation date ranking of the furloughed employee.

9. Employees on furlough have rights at least equal to those they would have had if they had been separated and placed on the reemployment priority list.

10. Scheduling:

a. For furloughs of thirty (30) days or less (short furlough), the total number of days which the employee may be furloughed shall not exceed thirty (30) days (if consecutive) or 22 workdays (if non-continuous).

b. Furloughs can be for consecutive or nonconsecutive days. Management will consider employee personal needs such as child care and outside employment as relevant factors in determining which days will be worked during nonconsecutive furloughs. Furloughs will be recorded in the correct manner to insure unemployment benefits are afforded to eligible employees.

c. Management may reduce the number of days of the furlough if it finds that fewer days are necessary due to changed circumstances. To increase the number of days, a new notice and identification process is required. The Parties will negotiate as appropriate.

11. Leave during Furloughs: Management may designate whichever days it chooses as furlough days. However, management will consider an employee's particular circumstances, to include the following:

a. For hardship cases, Management will consider deferring a furlough for employees on sick leave.

b. Regarding "use or lose" annual leave, the provisions of Leave Restoration will apply.

c. Where permissible under existing rules, employees shall have the option of electing days of leave without pay (LWOP) in place of furlough.

12. Emergency Furloughs. Consistent with 5 CFR 752.404(d)(2), advance written notice to employees with an opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as equipment breakdown, act of God, or sudden emergencies requiring the immediate curtailment of activities. When Management is made aware of a possible government shutdown, it will:

a. Notify the Union and provide copies of any official notices received which advise the agency of a potential furlough.

b. Provide Bargaining Unit employees potentially affected by such a furlough written information addressing their rights, benefits and obligations.

## **ARTICLE 29**

### **Competitive Sourcing Program under OMB Circular A-76**

#### **1. General:**

- a. Management will follow the principles outlined in this Article when making decisions on contracting out of work.
- b. Management agrees to consult openly and fully with the Union regarding any competitive sourcing study of a function within the bargaining unit .Management agrees to comply with the provisions of Federal Acquisition Regulation 48 C.F.R. Section 73 et seq, OMB Circular A-76, the Federal Activities Inventory Reform Act, this agreement and other applicable laws, rules and regulations concerning competitive sourcing.
- c. Barring circumstances outside the LCS control, the Local Union will be notified at least thirty (30) days prior to beginning a competitive sourcing study. Management agrees to consider any timely input from the Union as to how work and materials could be reorganized in a more efficient manner. These views will be used during the cost-comparison study and in developing the Performance of Work Statement (PWS).

#### **2. OMB Circular A-76:**

- a. When an A-76 competitive sourcing study is being conducted and when a Management established advisory/steering group is established, Management will invite a Union representative to participate.
- b. The Union will be invited to participate in any training sessions on preparation of the government's offer, also called the agency tender or any other training on theA-76 process that would not involve the Union in a potential conflict of interest.

3. Management will inform the Union of plans for proposed contracts, including personal services contracts, to perform work currently performed by members of the bargaining unit.

#### **4. Management Study - Streamlining:**

- a. To ensure cost savings and efficiency for THE LCS, Management may find it appropriate to do competitive sourcing studies for all work performed by employees before solicitations are issued. Such studies should indicate cost savings or other benefits as described in OMB Circular A-76.

b. When competitive sourcing studies involve formal discussion with employees, the Local Union will be given an opportunity to be present.

c. On request, and subject to applicable confidentiality requirements, Management will give the Local Union a copy of performance indicators and job analyses.

d. In accordance with 10 U.S.C. 2467, management agrees to consult with the Union on a regular basis, during the development and preparation of the performance work statement. Management is under no obligation to reveal pre-decisional or confidential information related to the development of the PWS.

e. The Local Union will have thirty (30) days from the date the streamlining process data was provided to propose streamlining options. The response time may be shortened if thirty (30) days is not practicable.

5. Performance of Work Statement (PWS): Following issuance of the solicitation, a copy of the Performance of Work Statement will be made available to the Local Union, upon request.

6. Upon request, Management will provide the Local Union representative with available information including, but not limited to, copies of:

a. solicitations concerning any A-76 competitive sourcing study of positions performed by bargaining unit members;

c. contract specifications concerning any A-76 competitive sourcing study of positions performed by bargaining unit members;

d. relevant, decisional correspondence from higher authority directing the competitive sourcing study;

e. non-confidential correspondence from Department of Labor regarding certification of a wage rate;

f. the performance work statement concerning any A-76 competitive sourcing study of positions performed by bargaining unit members;

g. all changes to the performance work statement that occur after issuance of the solicitation, concerning any A-76 competitive sourcing study of positions performed by bargaining unit members;

h. bid abstract;

i. contract award dates, and time frames for implementation;

7. If management is providing potential offerors a "walk through" of the function undergoing a competitive sourcing study, the Union representative may participate upon request.
8. The Local Union will be given the opportunity to attend public bid openings and review in house estimates after the bid opening.
9. Management recognizes the "right of first refusal" required by OMB Circular A-76 (Revised), Attachment B, Para. D.6.f.1.b which provides that the contractor will give the government employees, who have been or will be adversely affected or separated due to the resulting contract awards, the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-government employment conflict of interest standards.
10. Appeals: The Local Union may appeal the competitive sourcing study decision in accordance with the procedures set forth in OMB Circular A-76.
11. Disputes over compliance with the Circular A-76 and its Supplement are not grievable under the negotiated grievance procedure and should be pursued under the Circular A-76 appeal process.
12. Upon request, management will provide the Union with a copy of the annual inventory of commercial activities.
13. If a competitive sourcing or streamlining decision adversely impacts on bargaining unit employees, the Local Union and Management, the Union may request to negotiate all negotiable matters per Article 11.
14. Management will reasonably assist in finding suitable employment for any displaced employees affected by contracting out decisions, per the Agreement.

## **ARTICLE 30**

### **VOLUNTARY ALLOTMENT OF UNION DUES**

1. Any employee of THE LCS who is a member of the NFFE FD I IAMAW, AFL-CIO and is included within the Bargaining Unit covered by this Agreement may make a voluntary allotment for the payment of dues to the NFFE FD! IAMAW, AFL-CIO pursuant to the terms of the Agreement between the U.S. Department of Defense and the National Office, NFFE FD! IAMAW, AFL-CIO.

2. Should the Agreement between the LCS and the National Federation of Federal Employees concerning the voluntary allotment of Union dues not be continued or renegotiated at the time of any expiration date, then the Parties agree that the voluntary allotment of dues will continue until a new Agreement between the LCS and NFFE FD1, IAMAW, AFL-CIO is negotiated.

## **ARTICLE 31**

### **AGREEMENT**

#### 1. Duration:

a. The effective date of this Agreement shall be the date of approval or on the 31st day after execution of this Agreement, if the Agreement has been neither approved nor disapproved. It shall terminate three years after the effective date. It will remain in effect for yearly periods thereafter, automatically renewing itself on the day after the anniversary of the termination date, unless either Party serves the other with written notice, not more than one hundred and five (105) calendar days nor less than sixty (60) calendar days prior to the expiration date of its desire to terminate or modify this agreement.

b. Upon receipt by either Party of notice from the other Party of its desire to terminate or modify this Agreement, both Parties shall meet within ninety (90) calendar days to begin negotiations. When either Party notifies the other Party that it wishes to modify this agreement, this Agreement will be extended until the effective date of the modified Agreement. The parties agree that matters which are covered by this Agreement or any Amendments or Supplements will be subject to mid-term bargaining only if such matters are affected by a change in laws and/or government-wide regulations.

2. Printing and Distribution: The Bargaining Unit will be provided with one copy for every member in the Bargaining Unit. The Bargaining Unit is authorized to make an additional copy using LCS equipment for each new employee of the Bargaining Unit as they occur at that location. The National Office will be provided one hard copy and one electronic copy.

3. Within 60 days after approval of the agreement by DoD, the agency will forward a copy of the agreement for placement on the OPM Labor Agreement Information Retrieval System. A copy of the agreement will also be posted on the LCS intranet (I:/drive) in an appropriate folder with public access for all LCS employees, supervisors, managers and military members.

4. The effective date and termination date of the Agreement shall be printed on the cover.

**APPENDIX A**

Official Time Form:

**OFFICIAL TIME FORM**

NAME OF UNION OFFICIAL:

UNION POSITION:

DATE/TIME DEPARTED WORK AREA: Approximately

DATE/TIME RETURNED TO WORK AREA: Approximately

(Actual:) \_\_\_\_\_

SUPERVISOR'S SIGNATURE & DATE:

UNION REPRESENTATIVE'S SIGNATURE AND DATE:

**CHECK APPROPRIATE BOX**

\_\_\_ MID-TERM NEGOTIATIONS (BA)

\_\_\_ TERM NEGOTIATIONS (BA)

\_\_\_ LABOR MANAGEMENT RELATIONS (BD)

\_\_\_ DISPUTE RESOLUTION (BK)

## INSTRUCTIONS

1. Union representatives are required to complete the form each time Official Time is used. Completed form will be turned in to their first line supervisor. Absent emergency circumstances, the union representative will complete the form prior to the use of Official Time.
2. First line supervisor will sign the completed form and provide the union representative with a copy. If the first line supervisor is unavailable, the union representative will go to the second line supervisor, and after that to the third line supervisor. The union representative and first line supervisor will use the information on the form to complete the union representative's employee time card. Both the union representative and the supervisor are responsible for insuring that Official Time is correctly annotated on the employee's time card.
3. Signature by both the union representative and the supervisor constitutes correctness of time in and time out.

APPENDIX B  
DA FORM 5172-R

**APPENDIX C**

**SAMPLE TELEWORK AGREEMENT**

The following constitutes the terms and conditions of the telework agreement between:

Employee: \_\_\_\_\_  
Last Name                      First Name                      Middle Initial

\_\_\_\_\_

Title

\_\_\_\_\_

Pay Plan                      Series                      Grade

**Days in Biweekly Pay Period Employee is Authorized to Telework**

The employee is approved to work at the approved alternative worksite specified below in accordance with the following schedule:

DAY	PER WEEK	PER PAY PERIOD	WORK SCHEDULE FIXED/ ALTERNATE	FWS/CWS	DUTY HOURS (Specify hours of work and lunch break)
MON	_____	_____	_____	_____	_____
TUES	_____	_____	_____	_____	_____
WED	_____	_____	_____	_____	_____
THURS	_____	_____	_____	_____	_____
FRI	_____	_____	_____	_____	_____

Alternative Worksite:

The employee's alternative worksite is:

\_\_\_\_\_ Home office or work area  
Address: \_\_\_\_\_  
Location of home office or work area: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

\_\_\_\_\_ GSA Telecenter  
Address: \_\_\_\_\_  
Location of home office or work area: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

\_\_\_\_\_ Other approved alternative worksite:  
Address: \_\_\_\_\_  
Location of home office or work area: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

### **Changes to Telework Arrangement**

Employees who telework must be available to work at the traditional worksite on telework days on an occasional basis if necessitated by work requirements. Requests by the employee to change his or her scheduled telework day in a particular week or biweekly pay period should be accommodated by the supervisor wherever practicable, consistent with mission requirements.

A permanent change in the telework arrangement must be reflected in a new Telework Agreement.

### **Work-at-Home Telework**

It is the responsibility of the employee to ensure that a proper work environment is maintained while teleworking.

Work-at-home teleworkers must complete and sign a safety checklist that proclaims the home safe for an official home worksite, to ensure that all the requirements to do official work are met in an environment that allows the tasks to be performed safely. The employee agrees to permit access to the home worksite by agency representatives as required, during normal working hours, to repair or maintain Government-furnished equipment, and to ensure compliance with the terms of this telework agreement.

For work at home arrangements, the employee is required to designate one area in the home as the official work or office area that is suitable for the performance of official Government business. The Government's potential exposure to liability is restricted to this official work or office area for the purposes of telework.

The employee acknowledges that telework is not a substitute for dependent care.

The Government is not responsible for any operating costs that are associated with the employee using his or her personal residence as an alternative worksite, including home maintenance, insurance, or utilities.

### **Official Duty Station**

The employee's official duty station for such purposes as special salary rates, locality pay adjustments, and travel is

The official duty station corresponds to that found on the most recent SF50, Notification of Personnel Action.

### **Time and Attendance, Work Performance and Overtime**

Time spent in a teleworking status must be accounted for and reported in the same manner as if the employee reported for duty at the traditional worksite.

The employee is required to satisfactorily complete all assigned work, consistent with the approach adopted for all other employees in the work group, and according to standards and guidelines in the employee's performance plan.

The employee agrees to work overtime only when ordered and approved by the supervisor in advance. Employees who work overtime without such prior approval may be subject to administrative or disciplinary action.

### **Security and Equipment**

No classified documents (hard copy or electronic) may be taken to an employee's alternative worksite. For regular and recurring telework, sensitive unclassified material, including Privacy Act and For Official Use Only data, may only be used by teleworkers provided with Government-furnished equipment. The employee is responsible for the security of all official data, protection of any Government-furnished equipment and property, and carrying out the mission of DoD at the alternative worksite. Government furnished equipment must only be used for official duties and family members and friends of teleworkers are not authorized to use any Government furnished equipment

Where the employee has been approved by the Component DAA to use their personal computers and equipment for telework on non-sensitive unclassified data, remote access software must not be loaded into employee's personal computers for official purposes. The employee is responsible for the installation, repair and maintenance of all personal equipment.

The Component is responsible for the maintenance of all Government-furnished equipment. The employee may be required to bring such equipment into the office for maintenance. The employee must return all Government-furnished equipment and materials to the agency at the conclusion of teleworking arrangements or at the Component's request.

### **Liability and Injury Compensation**

The Government is not liable for damages to the employee's personal or real property while the employee is working at the approved alternative worksite, except to the extent the Government is held liable by the Federal Tort Claims Act or the Military and Civilian Employees Claims Act. The employee is covered by the Federal Employees Compensation Act (FECA) when injured or suffering from work-related illnesses while conducting official Government

business. The employee agrees to notify the supervisor immediately of any accident or injury that occurs at the alternative worksite while performing official duties and to complete any required forms.

**Standards of Conduct**

The employee acknowledges that he/she continues to be bound by the Department of Defense standards of conduct while working at the alternative worksite and using Government-furnished equipment.

**Mileage Savings**

The employee estimates that the telework arrangement will result in a reduction of approximately miles traveled in commuting per week.

**Termination of the Telework Agreement**

This telework agreement can be terminated by either the employee or the supervisor by giving advance written notice. Management shall terminate the telework agreement should the employee's performance not meet the prescribed standard, or the teleworking arrangement fails to meet organizational needs.

**Date of Commencement**

The telework arrangement covered by this Agreement will commence on:

\_\_\_\_\_

*(Date)*

**Signatures:**

\_\_\_\_\_  
Employee Date

\_\_\_\_\_  
Supervisor Date