U.S. Department of Justice
Washington, D.C.

Collective Bargaining Agreement Between the Legal Divisions/Office of the Solicitor General Department of Justice and the American Federation of State, County and Municipal Employees, Local 3719, AFL-CIO

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Table of Contents

Article 1

Parties to the Agreement, Recognition and Definition of Unit

Section A. Parties to the Agreement

The parties to this Agreement are the Legal Divisions/Office of the Solicitor General of the Department of Justice (hereinafter known as the "Employer") and the American Federation of State, County and Municipal Employees, Local 3719, AFL-CIO (hereinafter known as the "Union").

Section B. Unit of Recognition

The unit of recognition covered by this Agreement is that unit certified by the Federal Labor Relations Authority in Case No. 3-RO-00017. The Employer recognizes Local 3719 of the American Federation of State, County and Municipal Employees, AFL-CIO, as the exclusive representative of all employees (hereinafter sometimes referred to as "employees" or "bargaining unit employee(s)") in the bargaining unit as defined below. The Union recognizes that it is responsible for representing the interests of all such bargaining unit employees, with respect to grievances, personnel policies, practices, or matters affecting their general working conditions without discrimination and without regard to Union membership and in accordance with applicable laws.

Section C. Definition of Unit

The Federal Labor Relations Authority has certified the Union as the exclusive representative of the bargaining unit comprised of: All nonprofessional employees employed by the U.S. Department of Justice in the Washington, D.C. metropolitan area in the Office of the Solicitor General, Antitrust Division, Civil Division, Civil Rights Division, Tax

Division, and the Environment and Natural Resources Division, but excluding all professional employees, management officials, supervisors, temporary employees of 90 days or less, and employees described in 5 U.S.C. 7112 (b) (2) (3) (4) (6) and (7), temporary employees under stay-in-school and student programs, and law students on temporary appointment.

Section D. Coverage of the Agreement

This Agreement covers only those positions included in the bargaining unit. Where the term "employee" or "employees" is used, it is understood that it includes bargaining unit employees.

Article 2

Governing Laws and Regulations

Section A. Laws and Regulations

1. In the administration of all matters covered by this Agreement, the Employer, the Union, and bargaining unit employees are governed by existing and future laws and government-wide regulations. The parties recognize their obligation to engage in impact and implementation bargaining, in accordance with applicable laws, rules and regulations, with respect to future laws and future government-wide regulations.

2. For the duration of this Agreement, it will have the full force and effect of regulations within the bargaining unit. Where existing provisions of Department of Justice regulations, for which there is not a compelling need that meets the requirements set forth in 5 CFR § 2424.50, are in conflict with this Agreement, the provisions of this Agreement shall govern unless otherwise specifically stated in this Agreement. During this period, the Agreement will be modified only by the passage of legislation, the issuance of Office of Personnel Management or other government-wide regulations implementing 5 U.S.C. § 2302, the issuance of Department of Justice regulations required by law or appropriate authority or for which there is a compelling need which meets the requirements set forth in 5 CFR § 2424.50, or by mutual agreement of the parties.

Section B. Subsequent Agreements

The requirements of this Article shall apply to all subsequent supplemental, implementing, or subsidiary agreements between the parties.

Article 3

Bargaining Unit Employee Rights and Responsibilities

Section A. Conduct

The Employer and the Union strongly disapprove of abusive actions towards anyone in the workplace. Such actions may be written, or oral abuse designed to insult or belittle the individual, stronger in tone or deed than the situation warrants. Physical abuse will never be tolerated.

Section B. Statutory Rights

1. Each bargaining unit 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 under law, or this agreement, such rights include the right--

    a. to act for the Union in the capacity of a representative and the right, in that capacity, to present the views of the Union to heads of agencies and other officials of the Executive Branch of Government, the Congress, or other appropriate authorities; and

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

2. Bargaining unit employees have the right to have a Union representative present at any examination by the Employer in connection with an investigation if--

a. the employee reasonably believes that the examination may result in disciplinary action against the employee; and

b. the employee requests representation.

3. The Employer will inform employees annually of their statutory rights as set forth in this Section.

4. An employee may not be subjected to an adverse or disciplinary action solely because the employee invoked the Fifth Amendment privilege against self-incrimination in refusing to answer questions relating to possible criminal violations. However, the employee may be subjected to adverse or disciplinary action for refusing to respond to such questions if the employee is adequately informed both that he/she is subject to adverse or disciplinary action for not responding and that his/her response cannot be used against him/her in a criminal proceeding. The employee may also be subjected to adverse or disciplinary action for any false statement he/she provides.

Section C. Employee Disclosures

An employee is protected against reprisal as provided under applicable laws for any lawful disclosure of information he/she reasonably believes evidences a violation of any law, rule or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if the disclosure is not specifically prohibited by law or Executive Order and if the information does not relate to a criminal investigation being conducted by the Employer. A protected disclosure may be oral or written and to any person within or outside the agency, although employees are encouraged to make such disclosures to appropriate persons within the Employer's operations or the Department of Justice in the first instance. Disclosure of such information to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency, or another employee designated by the head of the agency to

receive such disclosures is protected even if the disclosure would otherwise be prohibited by law or Executive Order.

Section D. Employee Orientation

1. The Employer agrees to provide orientation and an "Entrance on Duty" package to all new bargaining unit employees. At a minimum, the orientation and the package for bargaining unit employees will include basic information concerning the employee's responsibilities and benefits.

2. The Employer will include in the "Entrance on Duty" package for bargaining unit employees a copy of this Agreement. The Employer will also provide an information package, furnished by the Union, containing brief introductory material about the Union. Such materials shall not contain significant factual inaccuracies concerning conditions of employment and shall not ridicule the integrity of any Federal employee, Government agency, or activity of the Federal Government.

3. In accordance with a schedule to be mutually agreed upon, the Personnel Office will provide the Union with a list of new bargaining unit employees who have joined the Employer's operations.

4. The Employer will provide the Union with a period of time, up to fifteen minutes in length during its orientation for new employees, during which the Union may distribute its introductory material and discuss the Union. If the Union representative is not available at the scheduled time, the Employer may proceed with its orientation.

Section E. Employee Pay

If an employee does not receive a salary payment when due, the Employer will initiate the process to produce a substitute payment as soon as possible. A substitute payment should be provided to the employee within five (5) workdays of the employee notifying the Employer of the need for the substitution.

Section F. Employee Records

1. The Official Personnel Folder (OPF) prescribed by the Office of Personnel Management (OPM) is the official repository of records providing the basic source of factual data about the employee's employment history. The OPF may be used by the Employer's Personnel Office as permitted by applicable law, rule, or regulation for any legitimate official purpose, including but not limited to, screening qualifications, determining status, computing length of service, and providing information for statistical purposes.

2. The OPF may be reviewed by, or be used to furnish information to, the Office of Personnel Management and the Employer's officers and employees who have an official need for the OPF or information contained therein, in the performance of their duties. Except for disclosures made in accordance with the previous sentence and to persons and entities engaged in law enforcement activities, the Employer will maintain a record in the OPF of all other individuals who have reviewed the OPF.

3. Any employee, or designated representative who is so authorized in writing by the employee, shall be granted reasonable access during business hours, to review and receive a copy under appropriate supervision, of any documents contained in the employee's OPF in accordance with applicable law, rule and regulation. Normally, the Employer will make the copies, but if

this would result in a significant time delay; the employee may make the copies under appropriate supervision.

4. Any information, including documentary information, that is unfavorable, derogatory or which reflects adversely upon an employee's character or government service shall be maintained in the OPF only in accordance with applicable law and regulation, including the Office of Personnel Management's manuals, The Guide to Personnel Recordkeeping and The Guide to Processing Personnel Actions. Employees may review and/or seek to amend any such information in accordance with 5 CFR Part 297, Subpart C, entitled Amendment of Records.

5. Employees have the right to update their Federal employment application/resume with relevant information regarding experience, education, and training, and to have that application/resume filed in their OPF.

6. Employee personnel records will be maintained in accordance with The Guide to Personnel Recordkeeping, The Guide to Processing Personnel Actions, the National Archives and Records Administration General Records Schedules, and other applicable government-wide law, rule or regulation.

Article 4

Union Rights and Responsibilities

Section A. Union Rights

1. The Union retains all rights provided under Title 5, Chapter 71, except as modified by this Agreement.

2. The Union is the exclusive representative of the employees in the bargaining unit and is entitled to act for, and to negotiate collective bargaining agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership.

3. Pursuant to 5 U.S.C. § 7114(a)(2)(A), the Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the Employer and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.

Section B. Nondiscrimination

The Employer will not restrain, interfere with, coerce, or discriminate against any designated Union representative in the exercise of his/her right to serve as representative for the purpose of negotiations, representation, or carrying out any other function proper under this Agreement or applicable law, rule or regulation on behalf of employees or a group of employees within the bargaining unit.

Section C. Information

1. Upon request, but no more often than quarterly, the Employer will provide the Union with a listing of all bargaining unit employees indicating grade, title, and organization location.

2. The Employer will provide information concerning dues check-off pursuant to Article 6 (Dues Withholding) of this Agreement.

3. The Employer will provide the Union with any changes or amendments to orders, regulations, or policies of the Department of Justice which concern personnel rules or practices applicable to bargaining unit employees and any new such documents upon issuance.

4. The Employer will provide the Union with reasonable access, for the purpose of reviewing and copying, to any government-wide regulation, the Federal Personnel Manual (FPM) and any Department of Justice Order or regulation which concern personnel rules or practices applicable to bargaining unit employees.

5. The Employer will provide in a timely manner other data the Union requests pursuant to 5 U.S.C. Section 7114 (b)(4).

Section D. Committees

If the Employer establishes a committee (such as a Labor-Management Cooperation Committee), that includes one or more bargaining unit members, to consider issues affecting the working conditions of bargaining unit members, the Union shall be afforded representation on that committee.

Article 5

Official Time

Section A. Definition of Official Time

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

Section B. Use of Official Time

Union representatives shall request official time from the Employer and shall be granted the use of reasonable official time for representational purposes unless such a Union representative's presence at the work site is necessary to meet work requirements

Section C. Designation of Union Officials for Use of Official Time

1. The Union shall have the right to designate stewards in the following numbers and manner: the Union may designate twenty-two (22) representatives, including stewards and four (4)

officers, one of whom will be the Chief Steward. These representatives may be granted official time for representational purposes. No more than one Steward or one officer may be named from any organizational unit with a total of 75 or fewer bargaining unit and non-bargaining unit employees that is headed by a single supervisor.

2. The Union will assign each steward to a specific representational area. The Union agrees that its normal practice will be to assign stewards to handle matters which arise in their designated areas. The Union will make reasonable efforts to assign stewards to matters which do not require such stewards to spend unnecessary time in travel from one location to another. The Employer recognizes that the Union President, Vice President, Chief Steward, and Deputy Chief Steward will not normally be assigned to specific representational areas and may be involved in issues which cut across representational area lines.

3. The work of employees in this bargaining unit may encompass access to grand jury materials, classified national security information, or other highly sensitive information that the government deems to be in its best interest to protect. If discussion of a particular representational issue may result in disclosure of such information, and the Union representative assigned to the matter does not have an appropriate security clearance or access authorization, the Union will select an appropriately cleared alternate steward to perform the representational functions. If there is no available Union steward or officer who possesses such clearance or authorization, and a member of the bargaining unit who is not a steward or officer does possess such clearance or authorization, such member will be allowed reasonable official time to serve as the employee's representative for that specific purpose only.

4. The Union shall provide the Employer with its initial list of stewards and officers within ten (10) days of the signing of this

Negotiated Agreement. This list may be updated and modified from time to time. The Union shall provide the Employer's designated representative with a list of Union representatives and their normally assigned area. Normally, any changes to the original list will be submitted in writing to the Employer's representative three (3) working days before the individual will be recognized by the Employer as having authority to represent the Union and be granted official time for representational duties. In exceptional circumstances, such as when a new steward replaces an old steward and is immediately confronted with a situation requiring Union representation, the Union may notify the Employer's designated representative orally, but must send a written confirmation within three (3) working days after that oral notification.

Section D. Prohibited Use of Official Time

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

Section E. Amount of Official Time for Representational Activities

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

Section F. Notification Procedures for

Official Time Use

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

1. The Union representative shall request official time from his/her supervisor or designee at the earliest reasonable opportunity. The request for official time shall be for finite periods, based upon the representative's good faith estimate of the time required to perform the particular function. Except as noted in paragraph (5) below, all requests for official time will be made in advance. Except in emergency situations, such as a Weingarten meeting called on short notice, the request must be made in writing, using Form LLMR1. In emergency circumstances, where the representative requests approval to leave the work site on short notice, he/she must explain the nature of the emergency; estimate the amount of official time required; obtain the supervisor's or designee's oral approval; and complete form LLMR1 immediately upon return to the work site.

2. Requests for the use of official time shall be made to the designated individual or designated alternate in the Union representative's supervisory chain, as determined by the Section/Office Head. After the Employer is notified by the Union of its stewards and officers, or changes thereto, the Section/Office Head will notify the Union representative of who is authorized to approve official time for that representative, including alternates.

3. In the event the Union representative or employee requires additional time due to unforeseen circumstances, after approval has been given, the representative shall request an extension of that time, by telephone or other appropriate means. The request shall be made to the approving official, or, in that person's absence, to the official's designated alternate. The extended time shall be granted if justified unless the Union representative's presence is necessary to meet work requirements.

4. Upon completion of a period of official time that is reasonable and necessary, the Union representative shall promptly report back to work, notify the management official who approved the official time that he/she has returned, and complete Part B of Form LLMR1 to record the actual time used. The Union representative shall promptly give the original of the completed form to the management official who approved use of official time.

5. The parties understand that unforeseen needs may arise precluding advance approval, such as telephone calls or visits to the Union steward's work site of no more than five (5) minutes duration. The Union steward will make every effort to limit such unscheduled activities to no more than a total of fifteen (15) minutes per work day. At the end of each work day during which the Union steward has engaged in these unscheduled representational activities, he/she will complete part B of a single form LLMR1, to record the total official time actually used during that day, and submit it to his/her supervisor or approving official. The parties agree that Union officers, specifically the President, Vice President, Chief Steward, and Deputy Chief Steward, may have additional demands placed upon them in the context of unscheduled activities. Such officers will make arrangements with their respective supervisors with regard to the amount of time to be allowed without advance approval.

6. During periods of high demand for usage of official time (i.e., contract negotiations, major reorganizations, reductions in force, multiple major moves occurring within a short time frame), management and the union representative involved may, by mutual agreement, modify the official time reporting procedures. In addition, the Union President and Chief Steward may use these procedures in obtaining advance approval for special projects concerning representational activities. This modified procedure will identify the reason for the exception to the negotiated reporting procedure and provide information on the projected

block(s) of time required and the projected duration. The union representative will ensure that the actual number of hours used during each pay period are reported in writing to the supervisor for inclusion on the time and attendance report.

Under these circumstances, the Union official will not be submitting a separate LLMR1 form for advance approval of each instance of official time usage. When necessary, the supervisor will contact the representative to inform him/her of the work needs that would preclude their use of official time during a particular time frame. In those instances, the provisions of Section G will apply.

Section G. Availability of Official Time in Case of Disapproval

In the event that a Union representative's request for the use of official time is disapproved in whole or in part, the decision-making official shall notify the representative as much in advance as possible, so that the Union may select an alternate representative. If after making a good faith effort, the Union is unable to designate an alternate representative, the Employer will make an effort to reschedule events or modify deadlines, if it is not unreasonable to do so.

Section H. Official Time for Training

1. Each year the Employer will consider Union requests for official time for Union representatives to participate in and/or conduct training concerning the provisions of the Negotiated Agreement and/or other labor relations matters of mutual benefit to the Employer and the Union. All training on official time must be limited to representational matters. For any training that covers internal union operations, annual leave or leave without pay must be requested in accordance with paragraph 3 below. The Union will provide the Employer with a copy of the training curriculum

or a statement of the training content with each request for training.

2. Each newly appointed Union representative may be authorized up to five days training. Three days training is authorized annually for all other Union representatives.

3. A Union representative's request for official time under this Section must be made at least two weeks in advance of the scheduled training and in accordance with Section F of this Article. The approval of requests for official time for representatives to attend training will receive the same consideration as is given requests for annual leave, i.e., whether the representative's presence is needed to meet work requirements.

Article 6

Dues Withholding

Section A. Eligibility

Pursuant to 5 U.S.C. 7115, the Employer agrees to withhold the dues of Union members, as specified below, on a biweekly basis through payroll deductions, subject to applicable laws, rules, and regulations. This agreement is applicable to all employees:

1. who are members of the bargaining unit (Case No. 3-RO-00017), and

2. who voluntarily complete an SF-1187 (Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues), and

3. who receive compensation sufficient to cover the total amount of the allotment.

Section B. Union Responsibilities

The Union agrees to:

1. notify the Employer in writing of the names and titles of officials authorized to make the necessary certification of SF-1187's;

2. forward the original and one copy of properly executed and certified SF-1187's to the Employee/Labor Relations Section of the Justice Management Division (JMD) Personnel Office on a timely basis. The Union may use the Employer's facilities to make one copy of each completed SF-1187. The Union will notify the Employer of the Union official designated to receive a

copy of each SF-1187 form which the Employer has certified and dated.

3. notify the Employer of the Union's current dues rate schedule and any changes thereto. The Union agrees that such rate changes shall not occur more often than once a year. In the case of a major change in the dues formula, e.g. from a percentage basis to a single rate, the parties will negotiate the lead time needed to implement the new system.

4. notify the Employer of the name and address of the person or party to whom the dues check shall be payable;

5. provide and distribute SF-1187's, or facsimiles thereof, to unit members;

6. provide and distribute information to its members on the voluntary nature of the system for the allotment of dues, including the conditions under which it may be revoked.

Section C. Employer's Responsibilities

The Employer, at no cost to the Union shall:

1. permit and process the allotment of dues;

2. withhold dues on a bi-weekly basis;

3. withhold initial dues effective the first full pay period after the receipt by the JMD Personnel Office, Employee/Labor Relations Section, of the employee's certified SF-1187, provided it is received three working days before the beginning of the pay period. For SF-1187's received after this cut-off, the Employer shall attempt to begin dues withholding effective the first full pay period after receipt. However, if this is not possible, dues withholding will become effective the following pay period;

4. the JMD Personnel Office, Employee/Labor Relations Section will stamp or otherwise indicate the date of receipt on all SF-1187's received in that office. The Employer will certify and date the copy of each completed SF-1187 and return it to the Union's designee;

5. make any change in deduction effective at the beginning of the first pay period in which any personnel action causing the change in an employee's basic rate of pay is processed;

6. adjust, upon certification of a change in the regular dues schedule of the Union by a duly authorized Union officer or agent, the dues withheld from the salaries of those members who have previously authorized dues withholding for the Union. Certification must be received in the Employee/Labor Relations Section of the JMD Personnel Office at least thirty (30) days in advance of the first pay period in which the change is to be effected;

7. remit the amount due the Union to the payee designated by the Union on the Employer's pay day. A grace period of seven days will be allowed in unusual circumstances.

Section D. Dues Statement

The Employer shall remit bi-weekly to the agent designated by the Union two copies of a statement providing the following information:

1. the names and social security numbers, in alphabetical order, of Union members for whom deductions are made;

2. the amount of dues withheld for the employee;

3. the total number of members for whom dues were withheld;

4. the total amount of dues withheld.

Section E. Forms Not Processed

When the Employer determines that an SF-1187 cannot be processed, the Employer shall promptly return the form to the Union, annotated with the reason for its return. In most cases, this annotation will be one word, such as "confidential," or "supervisor".

Section F. Errors in Withholding

Employees are responsible for checking the accuracy of their earnings statements. If the Employer fails to withhold Union dues in accordance with this Article, the Employer shall, upon notification of the error, remit appropriate dues to the Union retroactive to when the mistake was made. The Employee will have the right to seek waiver of the resulting indebtedness prior to the Employer collecting the indebtedness from the Employee. The Union agrees to promptly refund the amount of any erroneous overpayment it receives.

Section G. Dues Revocation

The effective date of action ending dues deductions under this Article are the following:

1. Employees may revoke their dues withholding only once a year during the first full pay period in May by submitting an SF-1188 form to the Employee/Labor Relations Section of the JMD Personnel Office. SF-1188's received outside of that time frame will not be accepted. The Employer agrees to provide the Union with one copy of each SF-1188 form it receives by the end of the next full pay period following the drop period. The parties understand that this agreement would allow an employee to revoke dues withholding in less than one year during the employee's first year of dues withholding if the employee authorized dues withholding less than one year before the drop period.

2. Termination due to separation, or moving to a position outside the bargaining unit, or expulsion from the Union will be at the end of the pay period in which the separation, transfer, promotion, or expulsion is effective.

3. Management will send an annual electronic notice of the drop period to bargaining unit employees no earlier than two pay periods before the first full pay period in May. The Union will be given the opportunity to provide Management with a brief mutual agreed description of the Union for inclusion in the annual notification.

Article 7

Union's Use of Facilities and Services

Section A. Union Office

The Employer will provide the Union with an office. The Employer will provide for this office the following furniture and equipment: one desk with chair, a small conference table with additional chairs, a coat rack, a trash can, telephone books, a copy of the DOJ telephone directory, a word processor, computer ID, a printer, a typewriter, one telephone with voice mail and one outside line to be used for official representational duties only. The Union office phone number(s) shall be listed in the DOJ official telephone directory by Union name, room number, and telephone number.

Section B. Joint Use Space for the Employer and the Union

1. In addition to having its own Union office pursuant to A, above, the Union shall be given the opportunity to request the use of the Department's meeting spaces during the lunch period, defined as 11:30am through 2:00pm, or before and/or after work hours. Any such activities will be scheduled in accordance with the usual practice governing the use and scheduling of the space requested. When reserving space during the lunch period, a reasonable period of time, generally 15 minutes (but in no case more than one half hour), may be scheduled at the beginning and end of each meeting for Union set up and breakdown of the space.

2. Unless meetings are for representational purposes, or absent specific agreement by the parties, employees attending Union meetings are to be in a non-duty status.

3. Any employee making the request to reserve the space on behalf of Local 3719 shall identify himself or herself as acting on behalf of the Union and shall state that the room will be used by the Union.

4. The Union understands that use of the meeting space will be subject to availability in keeping with whatever has been the usual practice for scheduling and use of that particular space. Even when use of the space is properly scheduled, it may be canceled in the event that it is needed for Government work, in keeping with whatever has been the usual practice for that particular space. Any change from the usual practice that is initiated by the Employer is subject to negotiation under the provisions of Article 30 (Impact and Implementation Bargaining).

5. The parties agree that the Union may use meeting space for internal Union business and representational activities in accordance with the provisions of this agreement. The provisions stated in paragraphs 1 and 2 above will not be used to constrain the Union in the conduct of its representational activities. Specifically, the Union may use meeting space for representational purposes during working hours or outside of working hours, subject to Article 5 (Official Time), other relevant articles and in accordance with the usual practice governing the scheduling and use of the space requested.

Section C. Security

Unless otherwise specifically authorized by the Employer, non-employees who are admitted to Legal Divisions/Office of Solicitor General space must comply with the Employer's security procedures.

Section D. Office Equipment

The Employer will provide one (1) locking file cabinet each to the Union President and Chief Steward for storage of papers relating to the Union's

representational responsibilities. A reasonable effort to locate the file cabinets close to the Union President's and Chief Steward's work stations will be made.

Section E. Word Processing Equipment

1. Officially designated Union officers and stewards are permitted to use word processing equipment located at their work stations and supplied by the Employer for representational functions only. Such equipment cannot be used for internal Union business. The word processing equipment may be used only during non-duty hours or when the officially designated Union representative has been granted the use of official time under the terms of Article 5 (Official Time) and when the equipment is not otherwise needed to meet the Employer's business purposes. In the event a particular piece of equipment is needed to meet such business purposes, the Employer's need shall have priority. The Employer will make available comparable equipment, if it is not unreasonable to do so. Word processing equipment may not be used to produce multiple copies of documents.

2. Union officers and stewards may store representational e-mails and communications between the Employer and the Union, and bargaining unit employees and the Union on the hard drive of any piece of word processing equipment or on diskettes provided by the Employer. Material relating to internal Union business may not be stored on hard drives and may only be stored on diskettes purchased by the Union. All diskettes, unless newly removed from the manufacturer's original packaging and never used before must be screened for computer viruses in accordance with established procedures for the specific system before being used.

3. No software other than that supplied by the Employer may be installed on the Employer's word processing equipment.

Section F. Photocopying Equipment

1. Type of Materials

The Employer's photocopiers and the Department of Justice Print Shop may be used only for photocopying of materials related to the Union's representational responsibilities. All costs incurred with respect to reproduction of representational materials will be born by the Employer. Material relating to internal Union business may not be copied by the Union on the Employer's equipment.

2. Seventy-five Pages or Less

Union officers and stewards shall have reasonable use of the Employer's photocopying equipment to photocopy representational material when the total number of photocopied pages produced does not exceed seventy-five (75) pages. Photocopying may be done only outside the Employer's duty hours of 9:00 a.m. to 5:30 p.m. or on approved official time and only when the equipment is not otherwise needed to meet the Employer's business purposes. Use of the Employer's photocopying equipment may be restricted or prohibited for budgetary reasons.

3. Over Seventy-five Pages

When the total number of photocopied pages to be produced exceeds seventy-five pages, prior permission must be obtained from the Employer's Labor/Employee Relations Staff. In the event permission is granted, the material to be copied shall be submitted to the Department of Justice Print Shop. The material will be copied at such time as the copying can be accomplished without interference with or delay of other copying needed to meet the Employer's work requirements.

Section G. Telephones

In performing representational functions, Union representatives may have reasonable use of the Employer's telephones.

Section H. Bulletin Boards

1. Provision of Bulletin Boards

The Employer shall provide a non-locking bulletin board for Union use in a mutually agreed-upon location accessible to bargaining unit employees in each of the buildings occupied by the Legal Divisions and the Office of the Solicitor General. Such placement shall be in accordance with established rules, regulations and policies governing the placement of bulletin boards in the assigned space. Bulletin boards will measure 36" x 48" or 36" x 24" unless they cannot fit into a designated space. The Parties may mutually agree to additional Union bulletin boards in order to ensure adequate accessibility for employees.

2. Use of Bulletin Boards

The Union shall have exclusive use of the designated bulletin boards, and such space shall be used for the posting or display of material pertaining to labor-management interests or material in the nature of communications to Union members. The Union may post any material which does not contain libelous material, which does not violate the law, Executive Orders, applicable federal regulations or this Agreement and which does not subject to ridicule the integrity or motives of any individuals, Government agencies or activities of the Federal Government. Material posted which is proprietary to the Union shall normally be identified as such. The Union shall be responsible for all matters and materials on the bulletin board and each item placed there shall be initialed and dated by a Union official. The Union agrees to keep its bulletin board space in a neat, acceptable and professional manner. Posting of material on the Union bulletin board shall be accomplished only during non-duty hours.

Section I. Communications with Management

The Union may use the Employer's internal mail systems, including electronic mail and facsimile equipment, to communicate with the Employer's supervisors and management officials with respect to representational matters.

Section J. Communications with Employees

1. Internal Mail System

Union officers and stewards may use the Employer's internal mail systems, including electronic mail and facsimile equipment, to communicate with an individual employee and each other on representational matters specific to that employee. Material directed to multiple bargaining unit addresses, such as meeting announcements, leaflets, newsletters, or other material directed to groups of employees may not be distributed through the Employer's internal mail systems. The Employer's mail systems shall not be used for internal Union business.

2. Work Site Distribution

Union materials may be distributed to bargaining unit employees at their work sites only in non-secure areas before 9:00 a.m. and after 5:30 p.m. when the distributor of the material is in a non-duty status. Union materials not related to representational purposes will not be produced or printed at government expense. Only material which does not contain libelous material and which does not violate the law, Executive Orders, applicable federal regulations or this Agreement, and which does not ridicule any Federal employee, or Agency or activity of the Federal Government may be distributed.

3. Posting of Signs, Flyers or Posters

Neither the Union nor bargaining unit employees shall post or display any material by placing or affixing it to walls in corridors, office space, elevator lobbies, elevators or elsewhere in the buildings where the Employer conducts its business without the Employer's permission.

4. General Distribution

The Union will have the opportunity to place copies of Union materials, described in Section J.2. above, in a holder provided by the Employer and placed near the Union bulletin board in each building.

Article 8

Merit Staffing

Section A. General Provisions

1. The principle of merit staffing is to ensure that employees are given full and fair consideration for advancement and to ensure selection from among the best-qualified candidates. The Employer recognizes the value of promoting from within.

2. Positions in the bargaining unit will continue to be filled on the basis of merit and in accordance with merit principles, see 5 U.S.C. Section 2302(b), government-wide law, rule, regulation and this Agreement.

3. The competitive procedures set forth in this Article will apply to those circumstances set forth and defined in the Employer's Merit Staffing Plans.

4. The area of consideration should be sufficiently broad to provide an adequate supply of highly-qualified applicants. The minimum area of consideration for bargaining unit vacancies will be the Office of the Solicitor General or the particular Division which has the vacancy.

Section B. Vacancy Announcements

1. Merit staffing announcements for bargaining unit positions shall be open for at least ten calendar days, except for reassignment actions, where posting is required, which will be posted for five calendar days. Announcements shall be available through the Office of Personnel Management's (OPM) website at http://www.usajobs.opm.gov/a9dj.htm and from the originating personnel office.

2. All vacancy announcements will contain at a minimum the following information:

   a. announcement number and issue date;

   b. area of consideration;

   c. title, series, grade, and number of positions;

   d. geographic location of position;

   e. closing date for acceptance of applications;

   f. duties of the position;

   g. qualification requirements, including any selective placement factors;

   h. evaluation methods to be used;

   i. known promotion potential, if any;

   j. instructions for applying;

   k. whether reimbursement for relocation expenses is authorized in the event selection is made of a candidate from outside the commuting area;

   l. a statement that the principles of equal employment opportunity will be adhered to in all phases of the staffing process.

Section C. Qualification Standards

1. Candidates will be rated basically qualified for a position if they meet the minimum qualification requirements for a General Schedule position described in OPM's Qualification Standards for General Schedule Positions (or Federal Wage System Job Grading, as appropriate) as supplemented by valid job-related selective placement factors, if any.

2. Selective placement factors may be used in determining basic qualifications if they are essential (not merely desirable) to successful performance in the position being filled. The inclusion of such factors must be clearly supported by the position description.

Section D. Evaluation and Ranking Criteria

The best qualified candidates will be identified through an impartial evaluation of eligible candidates based upon uniformly applied job-related evaluation criteria. The following factors will provide a framework for determining the appropriate criteria for each position:

1. Experience

Experience is to be evaluated in terms of the position to be filled. Length of experience may be used only to the extent to which it can be shown to be a valid job-related factor for the position being filled. This limitation does not rule out length of service as a tie breaker, which shall be used if, after all appropriate evaluation factors measuring quality have been applied, there are identical ratings among candidates.

2. Training and Education

Pertinent training, self-development, and outside activities determined to indicate effective performance in the position to be filled will be considered to the extent that they are clearly job-related, or clearly provide evidence of learning ability where this is a requirement for successful performance in the job.

3. Performance Appraisal

All applicants must submit a copy of their performance appraisal form completed within the last year. An applicant who is otherwise qualified, but does not have a current appraisal may obtain and provide a written statement from the most recent supervisor indicating that the applicant is performing at Level 3 (fully successful or equivalent) or better.

4. Awards

An employee's achievements (i.e., formal awards) that earned him/her special recognition will be assessed in terms of the requirements of the job to be filled. Only those awards earned in the last 5 years will receive consideration.

Section E. Evaluation and Ranking Procedures

1. Initial Review of Applications

Before beginning the evaluation and ranking procedures, the individual(s) having the candidate evaluation responsibility will first review all applications to ensure that each applicant:

a. is within the stated area of consideration;

b. meets minimum qualifications, including selective placement factors, if applicable; and

c. meets time-in-grade requirements where applicable.

2. Referral of Ten or Fewer Candidates

If there are ten or fewer qualified candidates, rating and ranking is not required. All well-qualified candidates are to be referred to the selecting official as being within the range of selection.

3. Rating and Ranking

a. If there are more than ten qualified candidates, evaluation for positions at grades GS-12 and below will be made by servicing personnel office or rating panel as determined by Employer.

b. Based upon the span of numerical scores, the evaluator(s) must determine which of the eligible candidates are best qualified and should therefore be referred to the selecting official. The best qualified candidates are those individuals with the highest scores. There should be a significant, or meaningful, break in numerical rankings separating the best qualified group from the remaining candidates.

c. The best qualified candidates will be referred for each bargaining unit position and/or grade level. The number of best qualified candidates referred may vary based on a meaningful break in scores, the total number of qualified applicants, the past history of declinations for the same or similar positions, or other relevant factors.

d. The names of the best qualified candidates will be listed alphabetically for referral to the selecting official. Individual scores will not be listed.

Section F. Selection

1. The selecting official will comply with government- wide law, rule and regulation, and this Agreement. The selecting official is not required to fill a vacancy by selection of one of the candidates listed on the certificate. He or she may request extension of the area of consideration or additional recruitment efforts or may fill the job by some other type of placement action. However, if selection is to be made from among those candidates who were rated and ranked under merit staffing procedures, the range of selection is limited to those candidates who have been identified as best qualified.

2. The selecting official's decision to select a particular candidate is subject to the approval of the appropriate appointing authority and such other approvals as may be required by law, regulation, or policy. The selecting official shall indicate his or her decision and other actions as required on the Candidate List.

3. If a promotion is involved, Bargaining Unit employees covered by this contract will be notified of their selection and will be released from their existing positions promptly, normally within 15 days after selection or at the end of the first full pay period after selection.

Section G. Merit Staffing Records

In accordance with applicable regulations, and ensuring that individuals' rights to privacy are protected, the servicing personnel office shall keep a copy of the following documents in each merit staffing file for a period of 2 years, or after formal personnel management evaluation review by OPM, whichever comes first, if the time limit for grievance has lapsed before the anniversary date:

1. Notice of Vacancy;

2. copies of ALL applications;

3. copies of performance appraisals or equivalent as defined in Section D.3 above;

4. rating criteria;

5. ratings for each applicant;

6. signed candidate list.

Section H. Employee Requests for Information

Unsuccessful candidates for positions filled competitively under this Article are entitled, upon written request, to the following information furnished by the servicing personnel office in writing, as soon as practicable:

1. whether the candidate was considered for the position;

2. whether the basic qualification requirements were met;

3. the evaluation criteria used for the position;

4. the values assigned to their own application for each evaluation criterion used;

5. whether the candidate was in the best qualified group of eligible employees from which selection was made.

Section I. Resolution of Disputes

1. Failure to be selected for promotion when proper promotion procedures are used, that is, non-selection from a group of

properly ranked and certified candidates is not a basis for a grievance.

2. A grievance may be filed when there is a violation of relevant Merit Staffing law, rule, regulation or the provisions of this Article.

Section J. Repromotion Rights

When an employee was demoted without personal cause and not at his or her own request, repromotion may be offered at the time the Employer makes a determination to fill the same position or one of equal duties for which the involuntarily-demoted employee qualifies.

Section K. Noncompetitive Promotion

1. Any bargaining unit employee may appeal the classification of his or her position as provided in the OPM's Employee Fact Sheet On Position Classification Appeals and DOJ regulations.

2. When, as the result of an appeal of a classification decision, the appropriate classification authority (OPM or JMD as appropriate) determines that there has been an accretion of duties and responsibilities that warrants an increase in grade, the Employer will be notified. The Employer will, within thirty (30) workdays of notification, either promote the employee without competition or eliminate or redistribute the grade controlling duties.

Article 9

Reassignments and Details

Section A. Reassignments

1. Definition

For purposes of this Article, the term "reassignment" means the noncompetitive movement of a bargaining unit employee for an indefinite period to another position with the same grade and promotion potential. The parties understand that reassignment is not accomplished at the discretion of the losing organization. The final authority to request such personnel actions lies with the gaining organization.

2. Purposes

The Employer may reassign employees for purposes that will promote the efficiency of the Employer's operation and/or for such reasons as to assure the better utilization of employee skills or abilities, to make the best use of current staff, to provide employees with opportunities to broaden their qualifications and experience in the work performed by the Employer, to resolve work-related problems, and to respond to employee requests. Requests by employees will be approved if the Employer finds that such reassignments will promote the efficiency of the organization.

3. Procedures

When a reassignment is required, the Employer will notify the employee of the effective date of the reassignment as soon as possible. The Union shall receive monthly reports on reassignment actions for bargaining unit employees.

Section B. Details

1. Definition

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.

2. Procedure

a. Details of an employee will be in increments of 120 days or less.

b. The Employer may consider excusing an employee from a detail assignment if the assignment would cause undue hardship.

c. The Employer will explain to the employee the purpose of the detail. The Union shall receive quarterly reports of details in excess of thirty days from the servicing personnel office. An employee who has questions or concerns about the temporary change in duties is encouraged to discuss these issues with his/her supervisor, servicing personnel office, and/or union representative.

3. Records

Employees may document details of thirty days or shorter and have the documentation included in the employee's worksite folder or any development folder the Employer or the Employer's supervisor maintains. The Employer shall document any detail in excess of thirty days in the employee's Official Personnel Folder, and will forward a copy of the record to the employee.

4. Evaluation

The supervisor for a detail period of 120 days or more will give the employee an interim rating of his/her performance at the end of the detail, to be considered by the employee's supervisor in preparing the rating of record.

Section C. Merit Promotion and Temporary Promotion

1. Merit promotion procedures do not apply when a detail or temporary promotion is intended to be for one hundred twenty (120) days or less or when a detail is to a position of the same grade and promotion potential.

2. Selection for higher graded positions will be accomplished as temporary promotions in compliance with merit promotion rules and regulations when the temporary promotion will be for a period in excess of one hundred twenty (120) days.

3. Merit promotion rules and regulations also apply to selection for details in excess of one hundred twenty (120) days for positions with greater promotion potential.

Section D. Procedure

When a detail or temporary promotion takes place, the Employer will notify the employee of the effective date of the action as soon as possible.

Article 10

Career Ladders

Section A. Definitions

1. A career ladder is a series of positions of increasing difficulty in the same line of work through which an employee or group of employees may progress from the entry level to the full performance level.

2. Within a career ladder, the highest grade level to which an employee may be promoted non-competitively (as he/she demonstrates ability to perform at that level) is the full performance level.

Section B. Procedures

1. Bargaining unit employees in career ladders should be provided the opportunity to perform the work performed by employees at the next higher grade level if it is available.

2. Promotions within career ladders shall be made, except under unusual circumstances, provided all of the following conditions are met: 1) demonstration of ability to perform at a higher level; 2) completion of necessary time-in-grade requirements; 3) Level 3 (fully successful or equivalent) or better performance appraisal issued within the last year; and 4) availability of funds and work to support the higher level position. Such promotions will be effective beginning with the first full pay period following approval by the authorizing official. [See Addenda of March 16, 1993 and November 20, 2001]

3. Upon request of the bargaining unit employee, the Employer will advise the employee of the reasons for non-promotion. If a

reason for non-promotion is the failure to receive the supervisor's certification of ability to perform at the higher level, the Employer will advise the employee of the specific capabilities required to gain the certification.

Article 11

Equal Employment Opportunity (EEO)

Section A. General Provisions

1. Employer's Commitment

In accordance with all applicable law, the Employer is committed to providing equal employment opportunities for all persons and to prohibiting discrimination in employment because of race, color, religion, sex, national origin, age, handicapping condition, marital status or political affiliation. The Employer will remain vigilant in seeking to identify and eliminate any internal policy, practice or procedure which has the purpose or effect of impermissibly denying equal employment opportunities. The Employer will work with the EEO Office as appropriate to resolve any discrimination inquiries or complaints.

2. Union's Commitment

The Union agrees that in carrying out its representational activities, the Union will not discriminate against any employee because of race, color, religion, sex, national origin, age, handicapping condition, marital status or political affiliation. The Union agrees to assist and cooperate with the Employer in assuring equal employment opportunity. The Union will promptly advise the Employer of any problems or potential problems it perceives in the area of equal employment opportunity.

Section B. EEO Affirmative Action Plan

An Affirmative Action Plan applicable to the Employer shall be maintained as required by applicable laws, rules or regulations. The Union may make recommendations about such Plan and may bargain to the extent permitted by law. Such negotiations may include but are not limited to long term goals, general recruitment ideas, and methods of monitoring the program.

Section C. EEO Complaint Processing

1. General Provisions

Complaints of employment discrimination may be pursued by bargaining unit employees under the EEO procedures established by applicable laws, rules and regulations or under the negotiated grievance procedure, but not both.

2. Procedures

Complaints filed under the EEO procedures will be processed in accordance with procedures established by the Equal Employment Opportunity Commission (EEOC) and by the Department of Justice. Complaints under the grievance procedure will be processed in accordance with Article 27 (Grievance Procedure) of the Agreement.

Section D. Demographic Data

To the extent that information and data exists, the Employer will provide the Union, upon written request, with the Employer's EEO Affirmative Action Plan and statistical information on work force composition, including job series, race, sex and grade levels of bargaining unit employees on an annual basis.

Section E. Communicating EEO Complaint Procedures

1. The Employer will post a copy of the EEO complaint procedures in each building occupied by bargaining unit employees and will provide the Union a copy of the procedures.

2. The Employer shall post the names, phone numbers, and work locations of EEO staff and counselors on an official bulletin board in each building, updated as appropriate.

Article 12

Performance Appraisal System

Section A. General Provisions

1. Performance appraisals for bargaining unit employees will be made in accordance with applicable law, government-wide regulations, agency regulations and this Article.

2. Performance appraisal is a continuous process. It is an integral part of a sound employee/supervisor relationship involving communication between employee and supervisor concerning requirements or job expectations, performance necessary to achieve them, and progress in terms of meeting stated objectives. Performance appraisal is a joint process designed to increase constructive communication between the supervisor and the employee, and to improve the employee's performance.

3. The Employer will notify the Union of its established time frames as reflected in the Employer's Performance Appraisal Program with respect to issuance of performance work plans, conduct of mid-term progress reviews and issuance of completed performance appraisals. The Employer will notify the Union of any changes to these established time frames.

4. Management will notify the Union when the performance appraisal process for the individual Legal Divisions/OSG is completed each year.

Section B. Definitions and Requirements

1. An individual performance work plan consists of a bargaining unit employee's written critical elements, and performance standards. All elements must be defined and included.

2. A job element is any distinguishable component of a bargaining unit employee's job that can be described as an outcome (i.e., a work product or service) or as a work process (i.e., a task which leads to a result).

3. Performance plans shall be based on the requirements of the position. The Employer shall provide the bargaining unit employee with a written copy of the applicable performance plan.

4. Critical element means a component of a position that consists of one or more duties and responsibilities that contribute toward accomplishing organizational goals and objectives and is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.

5. Each job element will be written.

6. If a job element has more than one component, all components will be identified.

7. A performance standard is a statement of the expectations or requirements established by the Employer for a critical element, at a particular rating level. Performance standards may include, but are not limited to, criteria such as quantity, quality, timeliness and manner of performance. Performance standards will to the extent feasible permit the evaluation of an employee's performance of the duties and responsibilities of his/her job on the basis of measurable criteria.

8. Performance elements and standards will be consistent with the requirements of the bargaining unit employee's duties.

9. Each bargaining unit employee shall be given an official rating of record each year unless otherwise precluded by DOJ Order 1430.3A and/or government-wide law, rule, regulation, or the Employer's performance appraisal program.

Section C. Consultations

l. In developing performance plans, the Employer may consider the views of bargaining unit employees who occupy the positions, when such views are presented, before implementing the performance plans.

2. A discussion will be held with bargaining unit employees individually once a year, normally at the beginning of the performance rating period, or at such time during the year as job changes may require a change in standards or elements. The purpose of the meeting is to relay information concerning the critical elements and performance standards and any other information necessary to meet or exceed the performance standards. At these meetings, the bargaining unit employee may make suggestions concerning appropriate critical elements and standards and raise other performance-related concerns, such as any steps or milestones necessary to meet or exceed the performance standards. The Employer agrees to consider such suggestions and recommendations prior to implementing the bargaining unit employee's critical elements and performance standards.

3. After the performance plan has been developed and the Employer has considered the bargaining unit employee's comments in accordance with this Agreement, the bargaining unit employee will be provided with a copy of his/her performance plan.

4. If the employee does not agree with some aspects of the standards or critical elements as finalized by the Employer, he/she may submit written comments to be attached to the standards and critical elements and to any rating form that uses them. An employee may request that his/her standards or critical elements be reconsidered in light of his/her comments or if the employee's duties have been changed. This would include instances where "other duties" (as defined in Article 13) which are not currently referenced in the work plan constitute a significant portion of the employee's work (e.g., at least 25 percent of their work).

5. Bargaining unit employees entering a position during an appraisal period shall be provided a performance plan in accordance with the provisions of this Article and within thirty (30) days after entering the position.

6. The minimum period upon which an appraisal should be based is ninety (90) days of continuous service in a position under the same performance expectations. However, the rating of a bargaining unit employee, who has not served ninety (90) days in the same position, under the same performance standards and critical elements, and under the same supervisor he/she has at the end of the rating period, shall be deferred until these conditions are met, unless a supplemental appraisal is secured from the bargaining unit employee's previous immediate supervisor or the rating is accomplished by the second-level supervisor, provided that the second-level supervisor shall have served as such for at least ninety (90) days and has knowledge of the bargaining unit employee's performance.

7. If a situation should arise where a bargaining unit employee will not receive an appraisal on an annual basis (due to detail, transfer, promotion or other action of the bargaining unit employee or supervisor(s)), the Employer shall inform the bargaining unit employee as soon as possible when such rating will be provided

or shall discuss with the bargaining unit employee an alternative method for developing the rating.

8. A progress review discussion will be held generally half way through the appraisal period. The progress review will generally be conducted during a meeting between the supervisor and an individual bargaining unit employee. Such a review has the specific purpose of discussing and, when appropriate, improving the bargaining unit employee's performance, or knowledge of a subject relevant to his/her employment. It is further agreed that other matters, such as promotion opportunities and training plans are appropriate subjects for discussion in these meetings. The date of the progress review discussion should be indicated on the bargaining unit employee's individual performance plan.

Section D. Ratings of Record

1. Normally bargaining unit employees will be given a completed appraisal within thirty (30) days of the end of the rating period. When a bargaining unit employee receives his/her rating, the employee will be given the opportunity to meet and discuss the rating.

2. Copies of performance documentation cited in the employee's rating of record will, if requested, be provided to the employee. The employee may submit written comments concerning his/her performance rating and/or any of the above documentation. The employee's comments will be filed with and attached to the performance rating and/or documentation wherever it is maintained.

3. If a bargaining unit employee wishes to contest the overall rating of record, the employee may do so by filing a grievance under Article 27.

Article 13

Position Descriptions

Section A. Preparation and Issuance

Position descriptions for bargaining unit positions will be established by the Employer in accordance with applicable laws, regulations, and classification standards. Accordingly, the position descriptions will identify major duties and responsibilities of the position, and the supervisory relationships of the position. Each bargaining unit employee will be provided with an accurate description of his/her duties and responsibilities in the form of a current position description as soon as possible after assuming the position. When appropriate, the position description will identify any duties which require special qualifications. For those positions classified and compensated under the General Schedule, the principal of equal pay for substantially equal work will be applied to all position classifications and personnel actions.

Section B. Changes in Duties and Responsibilities

Pursuant to Office of Personnel Management guidance, if the major duties of a position change significantly, the employee will be provided with an updated position description within a reasonable period of time, normally defined as four pay periods.

Section C. Job Restructuring

When, as a result of a desk audit, maintenance review or other management review, it is found that a position has been assigned higher grade determining duties that are regular and recurring, action will be taken in accordance with appropriate classification standards to either restructure the position or classify the position at the higher level. If the position occupied is found to be classifiable at a higher grade and management determines that the criteria for meeting a non-competitive

promotion action are met, the personnel action must be effected within a reasonable period of time, normally defined as two pay periods. An employee may appeal the classification of his/her position in accordance with applicable laws, rules or regulations and Department of Justice procedures.

Section D. Other Duties

1. The Parties agree that phrases such as "other related duties" or "other duties as assigned" are not to be construed as requiring performance of work that is of a personal, nonwork related nature for the supervisor. "Other duties" typically encompass duties that may be performed in support of the overall work of the office.

2. If an employee believes that "other duties" being assigned on a regular and recurring basis include grade-controlling duties, the employee should consult with his or her servicing personnel office regarding a revised position description. Employees also may file a classification appeal as described in Article 8, Section K.

Article 14

Probationary and Temporary Employees

Section A. Definitions

1. A probationary bargaining unit employee is an individual not otherwise excluded from the unit under Article 1, Section C who has been given a career or career-conditional appointment and who is serving his/her first year under that appointment and who meets the further requirements described in 5 CFR § 315.801.

2. A temporary bargaining unit employee is an individual on a temporary appointment of 90 days or more who is not otherwise excluded from the unit under Article 1, Section C.

3. Except where specifically excluded by the terms of any article of this Agreement, probationary and temporary bargaining unit employees are covered by relevant provisions of this Agreement, including the right of consultation with their Union representatives as appropriate.

Section B. Procedures for Probationary Bargaining Unit Employees

1. The Employer agrees, upon request of a probationary bargaining unit employee, to advise the employee of his/her performance progress at any time after expiration of the first six (6) months of the probationary period. The Employer will respond within a reasonable time to this request.

2. When, at its discretion, the Employer deems advance notice of termination to be in the best interest of the Service, the affected probationary bargaining unit employee will be given two (2) weeks advance notice. If less than two weeks probationary time

remains prior to the effective date of such action a lesser advance notice may be given.

3. The Employer may discharge a probationary employee at any time during their probationary period if they fail to demonstrate fully their qualifications for continued employment. When the Employer decides to terminate a bargaining unit employee serving a probationary period because his/her work performance or conduct during this period fails to demonstrate his/her fitness or qualifications for continued employment, the Employer shall terminate the probationary bargaining unit employee by notifying him/her as to why he/she is being separated and the effective date of the action.

4. The Employer may allow a probationary bargaining unit employee the opportunity to resign his/her position in lieu of termination unless the needs of the service, time or the availability of the probationary bargaining unit employee dictates otherwise. The Parties agree that a supervisor's ability to inform an employee of their right to resign may be in the interest of the employee. Accordingly, this notification will not, absent a demonstrated intent to the contrary, be construed as coercion of the employee to resign from their position.

5. To the extent permitted by 5 CFR § 315.806, probationary bargaining unit employees shall have the right to appeal their termination to the Merit Systems Protection Board, or, if the bargaining unit employee believes that his/her termination is based on discrimination, the bargaining unit employee may file an EEO complaint.

Section C. Procedures for Temporary Bargaining Unit Employees

1. When an individual is hired as a temporary employee for a position which is in the bargaining unit, he/she will be notified of the duration of his/her appointment.

2. If the temporary bargaining unit employee is being terminated because his/her performance or conduct is below satisfactory, the Employer may allow the employee the opportunity to resign in lieu of termination unless the needs of the service, time or the availability of the employee dictates otherwise. The Parties agree that a supervisor's ability to inform an employee of their right to resign may be in the interest of the employee. Accordingly, this notification will not, absent a demonstrated intent to the contrary, be construed as coercion of the employee to resign from their position.

Section D. Grievability

Nothing in this Article shall afford the probationary or temporary bargaining unit employee the opportunity to grieve a termination under the provisions of this Article.

Section E. Communication

The Parties agree that communication between the Employer and probationary/temporary employees concerning performance and duration of the appointment is desirable and beneficial to the accomplishment of the mission of the organization. Nothing in this Section shall be construed to limit the Employer's ability to take or not take any action under the laws, rules, and regulations regarding probationary/temporary employees.

Article 15

Leave

Section A. Annual Leave

1. Accrual of Annual Leave

Bargaining unit employees shall earn and accrue annual leave in accordance with applicable laws, rules, regulations and DOJ Order 1630.1B.

2. Use of Annual Leave

a. General Considerations

Bargaining unit employees are encouraged to use for rest and relaxation the annual leave to which they are entitled under leave laws and to take an adequate continuing period of leave of at least two consecutive weeks duration for a vacation each year, in addition to other shorter periods of leave.

b. Procedures

Requests for annual leave shall be made by submission of Form SF/OPM-71 (Application for Leave) to an employee's immediate supervisor or to such other person as the Employer may designate. Approval must be obtained prior to taking the leave requested. In the event of emergencies or unforeseen circumstances rendering it impossible to submit a Form SF/OPM-71 in advance, a bargaining unit employee must obtain telephonic approval for emergency annual leave from his/her immediate supervisor, or from such other person as the Employer may designate. Upon return to duty from any period of annual leave for which a Form SF/OPM-71 was not

submitted in advance, an employee must promptly submit a Form SF/OPM-71 for the period of absence.

c. Employee Responsibilities

Bargaining unit employees are responsible for planning and requesting annual leave, including "use or lose" accrued annual leave, a sufficient period of time in advance of taking the leave to enable the Employer both to schedule leave for all employees and to promote the efficient conduct of work. Bargaining unit employees are also responsible for requesting any changes in their approved leave schedules sufficiently in advance to permit efficient rescheduling by the Employer. Where conflicts arise between two or more bargaining unit employees, the Employer will encourage the employees to resolve the conflict on their own before a final decision is made.

d. Employer's Responsibilities

The Employer will respond to a bargaining unit employee's request for annual leave as expeditiously as possible. Normally, requests for use of accrued annual leave will be granted unless the Employer determines that work requirements do not permit use of annual leave for the period requested. If the Employer denies an employee's request for annual leave, the Employer will notify the employee as expeditiously as possible to permit the bargaining unit employee to submit a new request for annual leave. In the event the Employer determines that it is necessary to cancel a period of annual leave once approved, the Employer will notify the bargaining unit employee as soon as possible to permit rescheduling of the leave requested. In determining whether to deny or cancel a period of annual leave, the Employer may consider any personal hardship which would be caused by denial or cancellation. The Employer's work

needs, however, are paramount, and a decision on a request for annual leave is within the sole discretion of the Employer.

e. Advanced Annual Leave

At any time during the year, a bargaining unit employee may request the annual leave to his/her credit plus advanced annual leave, i.e., the leave that will accrue during the remainder of the current leave year. Advanced annual leave is not an employee entitlement. Advanced annual leave may be denied, if the Employer determines that the bargaining unit employee may not be able to earn the leave to be advanced during the leave year. Advanced annual leave may also be denied on the same basis as accrued annual leave, i.e., if work requirements do not permit use of advanced annual leave for the period requested. If advanced annual leave is granted, but is not earned later during the year, a corresponding refund of money will be required, except in the case of death of the employee, removal for disability, disability retirement, or entrance on active military duty with restoration rights as governed by DOJ Order 1630.1B.

f. Substitution of Annual Leave for Sick Leave

Accrued annual leave may be substituted for accrued sick leave upon a bargaining unit employee's request and the Employer's approval unless the substitution is for the purpose of avoiding forfeiture of annual leave.

g. Voluntary Leave Transfer Program

Bargaining unit employees may donate accrued annual leave for use by other employees in accordance with the Employer's Voluntary Leave Transfer Program and are subject to its restrictions and limitations.

h. Leave Bank

Bargaining unit employees may join the Department's Leave Bank Program by donating accrued annual leave in accordance with the Leave Bank's restrictions and limitations, during the annual open season or as may otherwise be determined by the Employer. Employees who participate in the Leave Bank may apply for leave donations under the terms and conditions established by the Leave Bank Board.

Section B. Sick Leave

1. Accrual of Sick Leave

Bargaining unit employees shall earn and accrue sick leave pursuant to applicable laws, rules and regulations and DOJ Order 1630.1B.

2. Use of Sick Leave

Use of sick leave is subject to the conditions and restrictions contained in DOJ Order 1630.1B and other applicable laws, rules and regulation. The amount of leave that can be approved is limited to that which is deemed medically necessary by the attending physician (or is otherwise appropriate for the purpose for which sick leave is being requested) provided that the documentation submitted is administratively acceptable to the Employer. Sick leave is authorized in the following circumstances:

a. when an employee is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy or childbirth;

b. for the employee's medical, dental, or optical examination or treatment;

c. prior to disability retirement;

d. when a member of the employee's immediate family is ill with a contagious disease, as defined in DOJ Order 1630.1B, and requires the care and attendance of the bargaining unit employee or when the presence of the employee on the job would jeopardize fellow employees because of his/her exposure to contagious disease; or

e. for the following family care purposes, within the time limits established by regulation for each category of leave listed:

(1) when an employee provides care for a family member who is incapacitated as the result of physical or mental illness, injury, pregnancy, or childbirth or who receives medical, dental or optical examination or treatment;

(2) when an employee provides care for a family member with a serious health condition as defined in applicable law, rules and regulations;

(3) when an employee makes arrangements necessitated by the death of a family member or attends the funeral of a family member, as defined in applicable law, rules and regulations;

(4) when an employee 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.

3. Unauthorized Use of Sick Leave

Sick leave may be used only for the reasons set forth in Subsection 2 above and for no other purpose. Improper use of sick leave may result in the period of absence being charged as absence without leave (AWOL) and is grounds for possible disciplinary or adverse action.

4. Procedures

a. Requesting Sick Leave

Whenever possible, an employee should request sick leave in advance by submission of a Form SF/OPM-71 to his/her immediate supervisor. In those circumstances when an employee is unable to request sick leave in advance due to sickness, injury or other unforeseen circumstance, the employee shall contact by telephone his/her immediate supervisor or designee to request approval of sick leave. When sick leave is not requested and approved in advance, a Form SF/OPM-71 shall be submitted promptly upon return to duty.

b. Medical Certificate

Supervisors may require a medical certificate or other administratively acceptable evidence for total periods of sick leave which exceed three days, or less than three days when it is determined to be necessary. Failure to provide such documentation upon request is grounds for the absence to be charged to AWOL. If the circumstances surrounding the employee's absence indicate that the services of a physician were not available or required, the employee's written statement describing the circumstances may be accepted in lieu of a medical certificate, at the supervisor's discretion, except that absences in excess of ten workdays must be

supported by a medical certificate. Management recognizes the confidential nature of medical documentation. Medical documentation will be handled in accordance with all applicable laws, rules and regulations.

c. Additional Medical Documentation

(1) The Employer has an obligation to approve or deny a request for sick leave in accordance with the applicable laws, rules, regulations, and this Agreement governing the proper use of leave. The Employer may request additional medical documentation on a case by case basis in order to make this decision. Failure by the employee to provide such information will result in approval or denial of the sick leave request based on the information available to the supervisor.

(2) Once an initial sick leave request has been approved, the Employer, during the period of time covered by the initial request, may request additional documentation for the same ongoing condition as appropriate, (e.g., a change in the medical condition; a request for reasonable accommodation based on the medical condition; the needs of the organization). Subsequent leave requests or a request for a modification in the initial leave request related to the same ongoing condition may require provision of updated medical documentation. Failure by the employee to provide such information will result in approval or denial of the sick leave request based on the information available to the supervisor. The parties agree that additional medical information will be requested only in accordance with the provisions of 5 CFR part 630.403.

5. Duty Hours Illness

If an employee becomes ill during a work day, he/she may leave the work site to go home, to visit a doctor or for the purpose of receiving treatment in the Health Unit after obtaining approval from his/her supervisor. Should the Health Unit recommend that the employee be sent home and the employee leaves his/her work site in an approved sick leave status, the employee shall not be required to furnish a medical certificate or other documentation substantiating illness for that day alone, subject to the provisions of subsection 4.b above.

6. Advanced Sick Leave

Advanced sick leave is not an employee entitlement, but may be requested and approved under appropriate circumstances, subject to the requirements and limitations contained in DOJ Order 1630.1B, Employer Directives, and government-wide laws, rules, regulations, including the Family and Medical Leave Act, and this Agreement.

Section C. Excused Absences

The Employer may excuse employees on an individual basis without charge to leave or loss of pay under circumstances which the Employer determines, in its sole discretion, to be in the public interest and/or in the interests of the Government. Examples of situations where excused absences may be considered by the Employer and criteria which may be applied in this consideration are contained in DOJ Order 1630.1B.

Section D. Leave Without Pay

1. Leave without pay (LWOP) is a temporary non-pay status and absence from duty approved upon the employee's request only.

2. LWOP may not be imposed as a penalty, nor may it be imposed for periods of disapproved absence.

3. Except as referenced in 3.a through c below, LWOP is not an employee entitlement, but may be requested and approved in accordance with DOJ Order 1630.1B, Employer Directives, applicable government-wide laws, rules, regulations, and this Agreement. The authorization of LWOP is a matter of administrative discretion; however, an employee shall be granted LWOP as a matter of right if the employee is:

   a. a disabled veteran who is entitled to LWOP, if necessary, for medical treatment under Executive Order 5396;

   b. a reservist or national guardsman who is entitled to leave without pay, if necessary, to perform military training duties; or

   c. an individual who meets the eligibility requirements of the Family and Medical Leave Act (FMLA), and who invokes his/her entitlement to LWOP under FMLA.

4. For circumstances other than those referenced in paragraph D.3, employees may request discretionary LWOP regardless of their length of service. Employees will normally be expected to exhaust accrued annual leave, accrued compensatory time and/or accrued sick leave before discretionary LWOP will be approved. The Employer will consider an employee's request for alternate sequences of leave usage.

Section E. Absence Without Approved Leave

1. Absence without approved leave (AWOL) is absence without pay resulting from a determination by the Employer that no type of leave will be approved for a period of absence for which the employee did not obtain advance approval or for which a

subsequent request for leave was denied. A bargaining unit employee who is absent without approved leave for any reason must explain to his/her immediate supervisor the cause of the absence and the reason for failure to request permission to be absent. If the Employer determines that the bargaining unit employee was absent for insufficient cause, the period of absence will be charged as AWOL. This includes instances when an employee has not complied with a supervisory requirement to supply medical documentation to support an absence as cited in Section B.4.b-c.

2. An employee who does not report to duty and/or does not request leave is considered absent without leave until such time as leave is requested and approved. An employee who has followed established procedures for requesting leave shall not be considered AWOL solely as a result of the supervisor's, or designee's, unavailability to approve the employee's leave request. An absence initially recorded as AWOL may subsequently be converted to approved leave at the Employer's discretion based on receipt of acceptable justification.

3. A charge of AWOL does not, in itself, constitute a disciplinary or adverse action, although AWOL could subject an employee to disciplinary or adverse action.

Section F. Extended Leave

1. General Provisions

a. For purposes of this Agreement, "extended leave" means any authorized absence from duty for a period in excess of fifteen (15) workdays. This would include sick leave, annual leave, LWOP or any combination thereof resulting in a total absence in excess of fifteen (15) workdays.

b. Employees may request extended leave in accordance with DOJ Order 1630.1B for various reasons including, but not limited to: illness or disability; maternity or paternity reasons; educational purposes; service in a public organization; and to care for family members during illness.

c. In making a request for extended leave, the employee may use a combination of sick, annual, advanced sick, advanced annual and LWOP provided the conditions for each leave as set forth in this Article have been met. Such a combination of various types of leave will be referred to as "combined leave" for purposes of this Agreement.

d. An employee will normally be required to exhaust accrued annual leave and/or accrued sick leave as appropriate before any period of LWOP will be approved.

e. Each request for extended leave will be considered on an individual basis, subject to appropriate regulations, with full consideration of individual needs and work requirements.

2. Procedures

An employee requesting extended leave must submit an appropriate leave request (Form SF/OPM-71) through appropriate supervisory channels. The following information must also be provided in writing:

a. the type of leave or combined leave requested;

b. the duration of each type of leave requested;

c. the amount of sick leave and/or annual leave which will be accrued at the time the employee plans to depart on leave;

d. the purpose and necessity for the period of extended leave requested;

e. the amount of annual leave, sick leave and/or LWOP used during the twelve months preceding the date of the request, including the total length of each leave period; and

f. a statement as to whether the employee intends to continue or terminate employment at the expiration of the period of extended leave requested.

Section G. Leave for Parental and Family Responsibilities

1. Employees may request the use of annual leave, sick leave, and/or LWOP, as appropriate, to meet parental and family responsibilities. The Employer agrees to administer leave for parental and family responsibilities in accordance with the applicable laws, rules and regulations (including the regulations promulgated under the Family and Medical Leave Act).

2. The Employer encourages managers who become aware of employees experiencing personal or family medical situations to contact the servicing personnel office for information on the Family and Medical Leave Act, the Leave Bank, the Voluntary Leave Transfer Program, the Employee Assistance Program (EAP) and/or the use of sick leave for family care purposes.

Section H. Access to Leave Information

Employees may access information on government leave regulations and policies through the Department of Justice web site and may contact the servicing personnel office with any questions. The Employer, in consultation with the Union, will annually remind employees of the availability of information through the Department's web site on current

regulations and guidance on all aspects of leave, including information on the Family and Medical Leave Act.

Section I. Leave Restriction

1. When management believes that an employee is misusing or abusing leave, a leave restriction notice may be issued. A leave restriction notice is constructive in nature and will include the reasons for placing an employee on leave restriction and the employee's leave reporting requirements. Such leave restriction letters will apply for an initial period of six months, with the ending date specified in the letter to the employee. If the employee's leave record significantly improves, management may rescind the restrictions at any time. If the employee's leave record does not significantly improve by the end of the leave restriction period, management may extend the period of leave restrictions in three month increments.

2. Health-related absences must be supported by a medical certificate. At a minimum, a medical certificate must be signed by a physician, state the reason(s) the employee is unable to report to duty, and provide the dates the employee was incapacitated for duty. When appropriate, to help management understand the medical situation as it impacts the employee's ability to do the job, management reserves the right to request supplemental medical documentation. Requests for medical documentation will be in compliance with all applicable laws, rules and regulations.

Article 16

Reductions in Force, Furloughs, and Transfers of Function

Section A. Employer's Rights and Obligations

Pursuant to all applicable law, regulations, and this Agreement, the Employer retains its statutory right to determine when a reduction-in-force (RIF), furlough or transfer of function will be conducted and what positions will be affected. When conducting RIFs, furloughs and transfers of functions, the Employer will fulfill all requirements of applicable law, regulations, and this Agreement.

Section B. Statement of Principle

When the Employer becomes aware of the necessity to conduct a RIF, furlough or transfer of function, as defined in Federal Personnel Manual (FPM) Chapter 351, it may consider appropriate means to minimize the adverse effect on employees such as, reassignment, attrition, freezes of recruitment for targeted positions and positive placement efforts.

Section C. Notification

1. Where possible, unless otherwise required by law or regulation, the Employer will provide no less than sixty (60) days notice to bargaining unit employees affected by a RIF, transfer of function, or furlough. At the same time, the Employer will notify the Union. Notification will be carried out in accordance with applicable regulations.

2. The notice shall contain the following information:

   a. the action the Employer intends to take;

b. the reason for the action (for informational purposes only) [See Addendum];

c. the effective date of the action;

d. the competitive area and level, and subgroup;

e. service computation date;

f. grievance and/or appeal rights, as applicable;

g. information on reemployment rights, if applicable; and

h. the place where the employee and their representative may inspect pertinent regulations, including FPM Chapter 351, and records releasable under applicable law.

3. As applicable, employees who have received specific notices, may request severance pay calculations from the Employer.

Section D. Union Rights

Pursuant to 5 U.S.C. 7114(a)(2)(A), the Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the Employer and one or more employees in the unit concerning RIF's, transfers of function, or furloughs of thirty days or more.

Section E. Competitive Levels, Areas, and Retention Registers

1. The Employer shall establish competitive levels and retention registers in accordance with applicable laws, rules and regulations.

2. The competitive area for RIFs, furloughs, and transfers of function shall be established pursuant to 5 CFR 351 in accordance with DOJ Order.

Section F. Offer of Position

1. To the extent required by applicable law, rule or regulation, the Employer shall endeavor to make a best offer of employment to each employee adversely affected through implementation of the RIF procedures. The offer, if made, shall be of a position as close as possible to, but not higher than, the current grade of the affected employee, and the position shall be within the employee's competitive area.

2. Bargaining unit employees shall respond to a best offer of employment in another position, in writing, within fifteen (15) calendar days of receipt of a written offer. Failure to respond within fifteen (15) calendar days shall be considered a rejection of the offer.

Section G. Separation

To the extent required by applicable law, rule or regulation, the Employer shall endeavor to find employment in other Federal agencies within the commuting area for the employees who are separated through a RIF. Employees for whom no positions are found may be counseled by a representative of the Employer on the benefits to which they may be entitled, including information concerning early retirement with

discontinued service annuity, where applicable. Reemployment priority lists shall be established for bargaining unit employees in accordance with DOJ Order 1351. The list for career employees shall be maintained for two years.

Section H. Administrative Furlough

1. The Employer will carry out furloughs of more than thirty days in accordance with RIF procedures and the provisions of this Article.

2. Furloughs of less than thirty days will be carried out in accordance with adverse actions procedures.

Article 17

Overtime and Compensatory Time

Section A. Overtime and Compensatory Time

Overtime and Compensatory time shall be paid and used in accordance with applicable provisions of the Fair Labor Standards Act ("FLSA"), Title 5, United States Code, their implementing regulations, and other applicable statutory law. Accrued compensatory time off shall normally be used by bargaining unit employees before accrued annual leave, except in the case of "use or lose" accrued annual leave.

Section B. Compensatory Time

Upon request, and in accordance with applicable law, rule, and regulation, employees may, with the approval of their supervisor, be allowed to receive compensatory time off in lieu of overtime payment. Compensatory time shall be used only as provided by law, and in no case will an employee who is nonexempt from the FLSA be required to accept compensatory time in lieu of overtime pay, unless the employee has requested compensatory time. Exempt employees who have requested and earned compensatory time and are prevented by their supervisor from taking this time within Agency prescribed limits because of exigencies of the service, will be paid overtime in accordance with applicable law and regulations. The refusal of compensatory time by a non-exempt employee will not be used against the employee.

Section C. Assignment of Overtime Work

1. Decisions with respect to the assignment of overtime work and determinations of the personnel to whom overtime work shall be assigned are matters committed to the Employer's sole discretion as provided by 5 U.S.C. §7106 (a)(2)(B). However, the

assignment of work or the denial of such assignment will not be made as a reward or penalty to an employee, but solely in accordance with the Employer's needs, qualifications of employees, and with consideration of normal work assignment patterns. To the extent possible, the employee's preference will be honored.

2. Bargaining unit employees who desire assignment of overtime work are encouraged to make their desire known to their immediate supervisors. Fully qualified employees in training or on details may request to be considered for overtime in their regular work unit if they are reasonably available as to time and location.

3. In the selection of particular bargaining unit employees for assignment of overtime work, the Employer may consider any relevant factors, including, but not limited to, the identity of the bargaining unit employee who would normally perform the work on a nonovertime basis; the willingness to be assigned overtime work and the frequency with which the bargaining unit employee has worked overtime; claims of personal hardship which would result from assignment of overtime work and/or other personal considerations; responsibility, reliability and dependability of the bargaining unit employee; level of rated performance of the bargaining unit employee; knowledge, skills and abilities of the bargaining unit employee; seniority of the bargaining unit employee; the nature of the work to be performed on an overtime basis; and other factors related to meeting the Employer's work requirements.

4. Employees will be given as much notice as is reasonably possible of overtime assignments outside the basic workweek or on a holiday.

Section D. Safety

Reasonable efforts will be made to ensure the safety and security of employees who perform overtime assignments. In this regard, a supervisor shall grant an employee reimbursement for taxicab fares when: funds are available; the transportation is between office and a mutually agreed safe location; the employee is requested or required to work overtime; the employee is dependent on public transportation for such travel, and it occurs during hours of infrequently scheduled public transportation and darkness. The employee shall raise any possible need for reimbursement of taxicab fares at the time the overtime is requested or ordered by the supervisor. Use of such funds is subject to Comptroller General guidelines.

Article 18

Personnel Records

Section A. Official Personnel Records

The official personnel records of employees of the Legal Divisions and Office of the Solicitor General are contained in the Official Personnel Folders (OPFs) maintained by the servicing personnel office which also maintains a copy of employee performance appraisals for the most recent four years in separate folders established for that purpose. Records of disciplinary and adverse action proposals including the documentation upon which such proposals are based, are maintained by the servicing personnel office. If the proposed adverse action is sustained, a copy of the final decision memo is retained in the Employee and Labor Relations files, while the SF-50 documenting the action is filed in the OPF. Letters of reprimand are also filed in the OPF for up to two years; however, at the supervisor's discretion the reprimand may be removed from the OPF at any time. Pursuant to the instruction stated in the letter of reprimand and Article 27, employees may grieve the letter of reprimand. Employees may have access to all of these records under the conditions set forth in Article 3 (Bargaining Unit Employee Rights and Responsibilities), Section F.

Section B. Supervisory Files

1. Supervisors of bargaining unit employees and/or Legal Division and OSG personnel offices may maintain worksite files on such matters as emergency locator information, time and attendance records, training, award, and promotion histories and other matters pertinent to the performance of their personnel management responsibilities. Such files will be maintained in accordance with government-wide law, rule or regulations, including those governing privacy of personnel records. In most instances, such files will contain only information that is

accessible to the employee through the records maintained by the servicing personnel office. To the extent that the supervisor maintains formal records containing information that is not duplicative of material contained in the official files maintained by the servicing personnel office, such records, other than reports of an ongoing criminal investigation, shall be disclosed upon request to the employee who is the subject of the information or to his/her designated representative. Personal notes that a supervisor may keep as a memory jogger are not considered formal records and are not releasable to employees, unless relied upon by the supervisor in taking a formal disciplinary action or adverse action, or compiled in the context of issuing a performance appraisal which contains narrative comments.

2. Employees may make a written statement to the Employer in response to information they consider unfavorable to themselves which is maintained by the supervisor as a formal record.

3. No record, information, or document in the supervisor's or personnel office's worksite file will be made available to any unauthorized persons to inspect, review, copy or photocopy. Such information will be made available to authorized persons only for official use, as specified by government-wide law, rule, or regulation.

4. The Employer will disclose to the employee all information, including worksite personnel files, used as a basis for disciplinary or adverse action at the time of the proposed action.

5. The Employer will inform both managers and employees of the requirements for safeguarding sensitive personnel information.

Section C. Medical Records

Medical information about an employee shall be disclosed to that employee or a representative designated in writing, except that medical evidence about which a prudent physician would hesitate to inform the individual will be disclosed only to a licensed physician designated in writing for that purpose by the individual or by his or her representative.

Section D. Form and Disposition of Records

1. All provisions of this Article apply to machine as well as manual files.

2. All personnel files maintained by the Employer, including the OPF maintained by the servicing personnel office, shall be disposed of in accordance with the General Records Schedule and other applicable laws.

Article 19

Hours of Duty

Section A. Definitions

1. Official Duty Hours

For purposes of this Article, the Employer's official business hours are 9:00 a.m. to 5:30 p.m., Monday through Friday; however, other duty hours for particular bargaining unit employees may be set by the provisions of this Agreement, consistent with the needs of the Employer.

2. Work Day

The work day for full-time bargaining unit employees shall consist of eight and one half consecutive hours. These hours include eight work hours for which bargaining unit employees are compensated.

3. Lunch Period

Each full-time bargaining unit employee is entitled to an unpaid lunch period at a time established by the Employer in its sole discretion. Normally a lunch period will be in the interval beginning at 11:00 a.m. and ending at 2:00 p.m. Individual preferences of full-time bargaining unit employees may be considered consistent with the Employer's work needs and coverage of essential functions.

4. Flexitour

"Flexitour" is a set tour of duty approved by the Employer that allows an employee to begin a work day prior to or after 9:00 a.m. or end a work day prior to or after 5:30 p.m. The following tours of duty would be available under the flexitour program consistent with the needs of the Employer:

8:00 a.m. - 4:30 p.m.
8:30 a.m. - 5:00 p.m.
9:30 a.m. - 6:00 p.m.

Managers may consider individual exceptions to these time bands based on employee requests and demonstrated need.

Section B. General Provisions

1. The parties agree that use of flexible hours of duty, specifically "flexitour," as defined in Section A.4. above, has the potential to improve productivity, provide greater service to the public and contribute to good employee morale. Toward accomplishment of these objectives, the Employer agrees to consider a flexitour where appropriate. Each bargaining unit employee's tour of duty shall be designed to ensure that the duties and requirements of the employee's position are fulfilled and that the Employer is able to perform its functions efficiently, productively, and economically. The Employer's work needs are paramount.

2. The parties agree that employees are not obligated to participate in the flexitour program. Accordingly, employees who are not working a flexitour will continue to work the official business hours as defined above.

3. Managers may establish limits on the number of employees allowed to work in any flexitour time band, based on work requirements, proper supervision, and operational needs.

4. The selected and approved flexitour cannot be varied from day to day by the bargaining unit employee. As used in this Article, the term "flexitour" expressly excludes such alternative work schedules as "variable flex," "compressed work week" ("five-four-nine"and "four-ten") and "Maxi-flex."

Section C. Procedures for Requesting Changes in Work Schedule

1. A full-time bargaining unit employee who wishes to be considered for a flexitour or who wishes to continue or change a flexitour approved prior to the effective date of this Agreement may request such hours of duty by submitting to his/her immediate supervisor the flexitour request form. Any subsequent changes must be requested using this form.

2. Once approved, flexitours shall remain in effect unless the Employer determines that changes are necessary to meet the work requirements, proper supervision or operational needs.

3. A bargaining unit employee on the official tour of duty (9:00 a.m. to 5:30 p.m.) who does not request a flexitour, shall continue working the official business hours unless the Employer determines that a change is necessitated by work requirements, proper supervision, or operational needs.

4. Notwithstanding the provisions of sub-sections 2 and 3 above, any full-time bargaining unit employee may request, and the Employer may approve, a change in work schedule necessitated by compelling personal circumstances or need.

5. The Employer may at any time deny requests for changes in work schedules--including requests to return to the official business hours for individuals on flexitour--if such requests would interfere with work requirements, proper supervision, or operational needs. The Employer may also deny such requests if

it determines that change or cancellation of the flexitour of a bargaining unit employee would adversely impact on the tours of duty granted to other employees.

Section D. Implementation

Changes in work schedules for bargaining unit employees approved under the terms of this Article shall be implemented by the Employer as soon as practicable but not more than thirty days (30) days after the decision to allow the change in the tour of duty.

Section E. Employer Initiated Changes

Nothing in this Article shall be construed to restrict the right of the Employer to change the hours of duty of individual employees or of a work unit in order to meet work requirements, proper supervision, or operational needs, or for other good cause determined by the Employer. Preferences of full-time bargaining unit employees may be considered in making such changes, consistent with work requirements, proper supervision, and operational needs.

Section F. Premium and Overtime Pay

Premium and overtime pay for bargaining unit employees granted changes in hours of duty shall be calculated and paid in accordance with government-wide law, rule, or regulation.

Section G. Timekeeping Controls

The parties agree that time keeping control for individual employees' attendance problems should be addressed on a case by case basis. Individual supervisors may require employees on a flexitour schedule to record their arrival and departure time each day, e.g., through the use of sign in/out sheets or electronic mail to their supervisor and/or timekeeper. Supervisors may modify existing sign in/out at any time as the need arises.

Article 20

Alternate Work Schedule Program

Section A. General Provisions

Efficient and effective performance of the agency's mission is a paramount concern. In accordance with Title 5, United States Code, Section 6131, the Employer may terminate the operation of the Alternate Work Schedule Program (AWS) in one or more parts of the unit at any time upon determination of adverse Employer impact (e.g., demonstration of a reduction of the productivity of that part; a diminished level of services furnished to the public; or an increase in the cost of operations). Affected employees will then have the opportunity to schedule their hours in accordance with Article 19 (Hours of Duty).

Section B. Definitions

1. Tour of Duty

The tour of duty for employees under a 5/4/9 schedule is defined by the fixed schedule established by the Employer. Tours will be arranged by the supervisor to enable an employee to fulfill their basic work requirements in nine (9) days, Monday through Friday, during the biweekly pay period.

2. 5/4/9 Schedule

This involves the following work schedule:

a. eight workdays of 9.5 hours duration (including a ½ hour unpaid lunch break), and
b. one work day of 8.5 hours duration (including a ½ hour unpaid lunch break), and

c. one day off.

3. 4/10 Schedule

A work schedule of eight work days of 10.5 hours duration (including a ½ hour unpaid lunch break) and two days off. The days off may not be scheduled to be on a core workday.

4. Core Workdays

Those days of the workweek as defined by the supervisor when all employees must be scheduled to be at work. Days off under the Program may not be scheduled on Core Workdays. To the extent possible supervisors will attempt not to designate both Mondays and Fridays as core workdays; however, the work needs of the office, as defined in Section D.2, will prevail in making such decisions.

Section C. Participation

1. If a 4/10 schedule is requested by an employee, the criteria for participation and procedures of implementation and evaluation will be as specified for 5/4/9 schedules in this Article.

2. Within each organization, employees who have received a most recent performance rating of Level 3 (fully successful or equivalent) or higher will be eligible for participation. Employees who have received a leave control or leave restriction letter within the previous six month period, regardless of the performance rating, will not be eligible for participation in the Program. Organization supervisors may exempt any other employee from participation in the Program if the supervisor feels that participation by employee would de detrimental to the efficiency of the organization as defined in Section D.2.

Section D. Procedure

1. Employees interested in participating in the Program will submit requested schedules on the Flexible Work Option Form to their supervisor, specifying the specific start and quit time proposed, the proposed days off in the pay period and, where a 5/4/9 schedule is requested, the proposed eight and one half hour day for that schedule.

2. The supervisor will review and approve, disapprove, or modify employees' requested work schedules. Supervisors will attempt to accommodate an employee's request, however, primary consideration will be given by the supervisor to the efficient operation of the organization, including, but not limited to, work place phone coverage, supervisory coverage available, availability of staff to clients and other organizations, and adequate presence of staff in the office (i.e. not too many employees out at the same time.) In the event that the requests of two or more employees conflict, the employee with greater seniority with the Department shall be given preference.

3. Once approved, the schedule will become the employee's approved schedule and the employee will be expected to adhere to this schedule.

Section E. Hours of Work

1. Under a 5/4/9 schedule, the workday will begin no earlier than 7:30am and shall end no later than 6:00pm. Participating organizations will offer employees the choice of starting work at 7:30am, 7:45am, 8:00am, 8:15am or 8:30am. Employees will work eight 9.5 hour days with quitting times of 5:00pm, 5:15pm, 5:30pm, 5:45pm or 6:00pm, depending on the starting time. There will be one 8.5 hour day with a normal quitting time one hour earlier or a starting time one hour later, depending upon arrangements made with the supervisor.

2. Under a 4/10 schedule the tour of duty will be limited to 7:00am to 5:30pm, 7:15am to 5:45pm, or 7:30am to 6:00pm.

Section F. Days Off/Holiday

1. Days off under the compressed work schedule must be taken according to a fixed schedule in the same pay period as the compressed work schedule is worked.

2. Days off may be rescheduled at the initiative of the supervisor when the needs of the organization dictate the presence of the employee at work during the scheduled day off.

3. When a holiday falls on a regularly scheduled day off, an "in lieu of" holiday will be scheduled as follows:

    a. if Friday is the regularly scheduled day off and a holiday, the employee will be off on Thursday;

    b. if Monday is the regularly scheduled day off and a holiday, the employee will be off on the preceding Friday;

    c. if an employee's regularly scheduled day off and a holiday both fall on a Tuesday, Wednesday, or Thursday, the supervisor will designate the "in lieu of" holiday during the same pay period.

4. When a holiday falls on a regularly scheduled workday, the employee will receive pay for the number of hours he or she normally would have been scheduled to work that day.

Section G. Excused Absences

Excused absences, usually credited as administrative leave, will be credited in accordance with the pre-set work schedule of the employee. For example, a snow day shutdown during an employee's scheduled work day would be credited to the employee as administrative leave in an amount of hours equal to the number of hours the employee was scheduled to work. Conversely, a snow day shutdown during an employee's scheduled day off would have no effect on the employee's hours of work.

Section H. Leave

When an employee is absent for an entire workday, the employee will be charged an amount of leave or AWOL equal to the number of hours regularly scheduled for the day of absence. The amount of time charged will be in accordance with the scheduled workday.

Section I. Timekeeping Controls

The parties agree that timekeeping control for individual employees' attendance problems should be addressed on a case by case basis. Individual supervisors may require employees on a 5/4/9 or 4/10 schedule to record their arrival and departure times each day, e.g., through the use of sign in/out sheets or electronic mail to their supervisor and/or timekeeper. Supervisors may modify existing sign in/out at any time as the need arises.

Section J. Changes

1. Schedule

a. Employee initiated - Once an alternate work schedule is elected, that becomes the employee's work schedule unless

the employee obtains supervisory approval for a change. Employees may, with the approval of their supervisor, request temporary changes to their work schedules due to extenuating circumstances so long as the number of hours worked in the work week do not exceed the normally scheduled hours for that week.

b. Employer initiated - The Supervisor may change an employee's schedule in response to the needs of the organization, pursuant to section D.2.

2. Suspension

Employer initiated - Supervisors may suspend an employee's participation in the Program in the following circumstances:

a. While an employee is in travel or training status. During this period, the employee will revert to a standard 8.5 work day. Exceptions to this rule may be made by the supervisor in those circumstances where remaining on the compressed schedule would be appropriate for the employee and for the accomplishment of their mission, such as short term training or travel.

b. To accommodate changes in work requirements and during periods of long term employee absences, e.g., maternity leave, or when an organization is engaged in especially concentrated work activity driven by external deadlines, e.g., the intensive preparation for a trial and the trial period itself; the preparation of OMB or Congressional budget materials, etc. The employee will be returned to his/her alternate work schedule as soon as the suspension of participation is no longer necessary.

3. Permanent

a. Employee initiated - Participating employees may remove themselves from the Program with advance written notice to the supervisor at any time.

b. Employer initiated - Supervisors may remove an employee(s) from the Program in accordance with Sections A, D.2, or as follows:

(1) demonstration of performance below Level 3 at any time, as documented by the supervisor (e.g. performance improvement letter); or

(2) issuance of a leave control or restriction letter.

c. Once removed, employees:

(1) with less than a Level 3 rating (fully successful or equivalent) are not eligible to participate during the remainder of the rating period;

(2) with leave control or restriction letters are not eligible until six months after the expiration of the letter.

Article 21

Upward Mobility

Section A. Principles and Goals of the Upward Mobility Program

1. The Parties agree that it is in their mutual interest to provide upward mobility opportunities, consistent with the Employer's work requirements, for employees to advance so as to perform at their highest potential.

2. Upward mobility is a systematic Employer and Employee interactive effort that provides for the development and implementation of specific career opportunities for lower level employees who are in positions or occupational series that do not enable them to realize their full work potential. To implement this, the Employer will conduct an Upward Mobility Program to inform employees of, and facilitate their advancement to, new positions at higher grade levels and/or greater promotion potential in either single or two-graded occupations.

3. The measures that the Employer may take to achieve this goal include job restructuring, provision of developmental assignments or opportunities for self-development, provision of career and educational information, and both formal and on-the-job targeted skills training. Employees are encouraged to demonstrate superior on-the job performance and initiative in taking on new responsibilities and/or undertaking self - developmental activities in order to heighten their upward mobility potential. Bargaining unit employees desiring information on upward mobility opportunities available within a Legal Division or the Office of the Solicitor General should contact the personnel offices of the Legal Divisions/OSG.

4. The goals of the Upward Mobility Program are to:

    a. realize a more effective utilization of the capabilities and potential of employees;

    b. motivate employees and promote a climate conducive to an increase in productivity;

    c. provide employees with opportunities to enhance qualifications in their current career fields;

    d. provide opportunities for employees with demonstrated potential to be competitively selected for new career fields;

    e. once competitively selected, provide appropriate training for the employee to function effectively in his or her position;

    f. provide the opportunity for further career advancement in the chosen field, depending on work performance and capabilities;

    g. provide a broad base for the selection of personnel for technical, administrative, program, and specialist positions, and thus diversify the employee population in those careers.

Section B. Employer Responsibilities

Each of the Legal Divisions and the Office of the Solicitor General will be responsible for:

1. identifying and announcing upward mobility positions under the Merit Staffing Program described in Article 8, and making competitive selections in accordance with merit principles. These positions may include, but are not limited to, a variety of bargaining and non-bargaining unit positions at both single and two-grade intervals;

2. identifying sources of information for employees on opportunities for upward mobility through such mechanisms as targeted job searches, and responding to employee requests for information;

3. providing guidance and/or resources on the means and techniques for identifying career goals and interests, and on strategies and approaches to the job search and application processes;

4. after competitive selection for an upward mobility position, providing the employee with such guidance and assistance as would normally be needed to perform the duties of the position;

5. reassigning the employee to the new position as soon as practicable after selection;

6. preparing annual reports as required.

Section C. Employee Responsibilities

Employees are responsible for:

1. applying for vacant positions as they are advertised under the Merit Staffing Program described in Article 8;

2. taking the initiative, both on and off the job, to develop their knowledge and skills to prepare themselves to reach their full potential;

3. demonstrating through job performance their potential for assuming greater responsibilities and higher level work;

4. seeking advice and assistance from their supervisors to correct deficiencies in job performance or knowledge;

5. highlighting changes in qualifications, e.g., completion of training courses and grades received, if applicable, when applying for upward mobility positions.

Section D. Filling Upward Mobility Positions

1. Employer Merit Staffing Vacancy Announcements identified as offering upward mobility opportunities, as defined in Section A.2, at GS-13 or below with an area of consideration within one or more of the Legal Divisions/OSG or the Offices, Boards, and Divisions of the Department of Justice will contain the following statement:

   "This position offers career mobility opportunities to qualified Legal Division/Office of Solicitor General employees, who are encouraged to apply."

2. Employees who meet the following criteria are eligible to apply for upward mobility positions:

   a. the employee must be presently serving under a permanent or term appointment in the Legal Divisions/OSG.

   b. the employee must meet qualification requirements for the specific position as set forth in the vacancy announcement.

3. The Employer agrees to give careful consideration for upward mobility positions to all qualified applicants within the unit. Nothing in this Article shall be construed to limit the Employer's right to fill positions from any appropriate source, including sources outside the bargaining unit. Evaluation methods for selecting candidates will conform to merit staffing principles.

Section E. Facilitating Employee Career Development Efforts

In order to facilitate employee-initiated career development efforts, the Employer shall:

1. provide employees with a reasonable amount of time during work hours to discuss their career development with their supervisors and/or the Personnel staff;

2. in conjunction with an employee's desire to change career goals, give appropriate consideration to an employee's request for a lateral transfer to a different job, or request for transfer to a lower graded position, in accordance with Article 9 (Reassignments and Details);

3. at an employee's request, provide verification of the employee's on-the-job experience to institutions of higher learning that request such information.

Section F. Employer Upward Mobility Initiatives

In order to achieve the goals of the upward mobility program set forth in Section A, the Employer will research and develop initiatives designed to: a) make employees aware of career opportunities available within the Legal Divisions/OSG, and b) help employees make informed decisions in pursuing their career goals. Efforts will include:

1. making available to all employees information on qualification requirements for positions from GS-5 to GS-13 with upward mobility potential;

2. identifying relevant training and other resources that may be available to assist the employee in reaching his/her goals;

3. offering special events, such as career counseling seminars with group or individual counseling, that focus on specific occupations or other aspects of career development;

4. providing systematic information on government-sponsored and other training and development opportunities, in accordance with Article 22;

5. improving awareness of upward mobility position openings by advising employees of the capabilities of USAJOBS available on the Internet.

The Employer will keep the Union fully informed on these initiatives through the Joint Committee described in Section H.

Section G. Upward Mobility Report

1. On an annual basis, or as mutually agreed, the Employer will provide the Union with a consolidated report on its upward mobility program during the preceding fiscal year under this contract. The report will include a listing of career and career conditional positions advertised under Merit Staffing vacancy announcements at grades up to GS-13 that have been identified by each Legal Division/OSG as offering upward mobility opportunities for bargaining unit employees. Such positions may include a variety of technical, administrative, program, and specialist positions, including paralegal specialists, with promotion potential beyond GS-7. The number of such positions that are announced each year will be subject to the work needs of the organization, the availability of appropriate vacancies, and the funding to fill such vacancies.

2. The report will indicate the total number of advertised upward mobility opportunity positions; the number/percent of those positions that were filled by bargaining unit employees moving to positions at higher grades or with greater promotion potential;

the number/percent that were filled by applicants outside the LDs/OSG; the race, sex, and national origin of the individuals selected; and the previous position of bargaining unit selectees. The report will also list any other efforts aimed at achieving upward mobility (e.g., special training programs and developmental opportunities, provision of relevant information and assistance to bargaining unit employees; position restructuring, etc).

Section H. Joint Committee

1. The Employer and the Union will establish a joint committee, comprised of an equal and mutually agreed upon number of Union and Employer representatives to review the result of upward mobility efforts.

2. The Committee will meet annually to review the report submitted by the Employer under Section G and to monitor progress. The Employer will provide a copy of the report two weeks in advance of this meeting. As appropriate, the parties will explore ways and means of increasing the level and/or diversity of upward mobility participation.

3. The Committee will meet again six months after each annual meeting to monitor specific concerns.

Section I. Coverage

This Article is a complete description of the Upward Mobility Program of the Legal Divisions/OSG and supersedes the provisions of DOJ Order 1411.1A (Upward Mobility) and any other DOJ directive relating to Upward Mobility.

Article 22

Professional Development and Training

Section A. Cooperation

1. The parties agree that it is a major goal to improve the general job performance of all employees and to develop the knowledge, skills, and abilities of employees in order to promote the more effective utilization of available human and material resources in service to the Department of Justice. The provisions of this Article are intended to create and foster a work environment conducive to the professional development of bargaining unit employees. The parties recognize that the purpose of training is to enhance the effectiveness of employees in carrying out the mission of the organization.

2. The Union, represented by the Union President and the Chief Steward, will meet annually with officials from the Employer to exchange information on career development and training programs, policies, and procedures.

Section B. General Provisions

1. The Employer agrees to offer appropriate training, career planning, and development opportunities to employees. Such opportunities will be given fairly, consistent with affirmative action and other broad staff development goals, and will be founded upon compliance with and subject to the following:

   a. 5 U.S.C. Chapter 41 and regulations issued pursuant thereto;

   b. the Equal Employment Opportunity Act, as amended;

   c. the Affirmative Action Plan;

d. Government-wide appropriations law; and

e. available resources allocated for training purposes.

2. Training encompasses educational activities that improve individual and organizational performance and assist in achieving the agency's mission and performance goals. Any training provided with Government funds must meet needs identified by the Employer for knowledge, skills, and abilities bearing directly upon the performance of the Employer's official duties.

3. A record of each satisfactorily completed internal training course shall be filed by the Employer. A record of each satisfactorily completed training course from an external source shall be filed within a reasonable time after if has been made available by the employee to the Employer.

4. The Parties accept the principle that each employee is responsible for applying effort, time, and initiative in increasing his/her potential through self-development and training. The Parties will encourage employees to take advantage of training and educational opportunities that enhance work efficiency and provide needed skills for advancement.

Section C. Training Methods and Procedures

1. The following approaches to employee training may be utilized:

   a. on-the-job training, government-provided courses, or other courses during duty hours to improve employee capabilities to perform their current duties;

   b. cross training and rotational assignments in complementary positions;

c. enrollment of employees in part-time educational programs at local educational institutions and/or in correspondence courses. Such activities will be performed outside of the employees' assigned work hours, unless otherwise authorized;

d. long-term training in Federal and non-Federal educational institutions.

2. Supervisors are encouraged to discuss with employees training needs and opportunities that would help the employee to improve performance in his/her current position, normally at the time of the performance evaluation, progress review, or at any other time necessary.

3. Employees shall receive training and/or orientation determined appropriate by the Employer for any job in which they are placed.

4. Employees shall normally receive notice of selection for training or educational opportunity for which they applied or were nominated within a reasonable amount of time from the date of receipt of the request for training by the appropriate Executive Office. In case of non-selection, the employees may request and receive an explanation for the denial.

5. In accordance with DOJ and OPM regulations, the Employer shall make payment for all allowable and authorized expenses incurred in connection with approved training requests.

6. During the hours of duty, an employee will remain in work status when away from the work site to participate in Employer approved training courses or programs.

7. An employee who is authorized to participate in training that will require an adjustment in his/her regularly scheduled duty hours, shall follow the procedure set forth in Article 19 (Hours of Duty) or Article 20 (Alternate Work Schedule Program).

Section D. Training Announcements

1. DOJ announcements and other pertinent training information will be made available to employees by the Employer. Information on announcements for training, new courses and special programs will be made available to the Union by the Employer (e.g., LD/OSG's intranet, DOJ intranet).

2. The Employer will also make available information on any in-house training programs that are offered to its bargaining unit employees.

3. The Employer may also maintain reference information on courses offered by other government agencies, area colleges, and private vendors.

4. The Employer will make available information designed to inform supervisors and employees of the procedures for requesting and recommending training.

Section E. Paralegal Training

The Parties encourage employees interested in a paralegal career to pursue appropriate training. To this end, the Employer will identify paralegal training programs available in the Washington, D.C. area and through the National Advocacy Center in Columbia, S.C. The Employer may provide funding for employees to take specific paralegal courses subject to the Employer's identification of the need for such training for the performance of official duties and the availability of funds.

Article 23

Dependent Care

Section A. Introduction

As a service to employees who have dependent care responsibilities, the Employer has undertaken, as resources permit, several initiatives to provide information and support. The parties are committed to working together to maximize the use of these dependent care services by bargaining unit employees. To this end, the parties shall jointly establish a Dependent Care Committee, which will operate on a consensus basis. This committee will work with appropriate Department officials to promote diversity and use of these services by bargaining unit employees. Official time for committee activities will be requested in accordance with Article 5.

Section B. JUST US KIDS

1. A day-care center sponsored by the Department of Justice was established in May 1992. The center is known as JUST US KIDS and currently is located at 625 Indiana Ave., N.W., Washington, D.C. JUST US KIDS is a not-for-profit organization. The Center is the result of years of intensive effort and reflects the Department's commitment to the importance of high quality child care and early childhood education.

2. JUST US KIDS accepts all children without regard to sex, race, color, religion or national origin. Priority in filling openings will be given to children of Department of Justice employees consistent with the business practices of the Board of Directors. The Department determines neither priority status nor enrollments.

3. The Parties strongly encourage JUST US KIDS to maintain its status as a non-profit organization eligible to participate in the Combined Federal Campaign and to maintain a tuition assistance program for families in economic need.

Section C. Other Dependent Care Initiatives

1. Other Department initiatives include:

    a. making available resource and referral services for dependent care (pre-natal, child care, parenting, and elder care);

    b. subsidizing the development of and continuing support of an income-based child-care facility;

    c. co-sponsoring child care facilities in the D.C. area;

    d. providing emergency child-care information and assistance; and

    e. supporting the tuition assistance program at JUST US KIDS from designated non-appropriated funds sources.

2. Information on these programs is available on the DOJ web site and at: http://www.Lifecare.com/. Continuation of these initiatives is subject to funding and policy determinations.

Article 24

Health and Safety

Section A. General Policy

The Employer and the Union agree that the good health and safety of all employees is essential to the performance of the Employer's mission, and is a matter of high priority. Accordingly, the Employer and the Union agree to work cooperatively to ensure that a healthy and safe working environment is maintained.

Section B. Employer Responsibilities

1. The Employer will work with the Justice Management Division (JMD) of the Department of Justice, the General Services Administration (GSA), the lessors of all government-leased/owned buildings occupied by Local 3719 bargaining unit employees and other entities or organizations which control work space to which bargaining unit employees are assigned to ensure that healthy and safe working conditions are maintained and to ensure compliance with applicable laws, rules, and regulations. The Employer will also take appropriate action to ensure that any reported hazardous or unsafe working conditions are examined and, if necessary, corrected in a timely manner.

2. The Employer agrees to work with JMD regarding the following:

    a. to enforce government-wide laws, rules, and regulations regarding smoking;

    b. to provide information concerning Federal Employee Health Benefits and Life Insurance Programs, pre-retirement planning, retirement benefits information, and occupational health services;

c. to make reasonable efforts to provide clean restrooms in which normal supplies shall be available at all times and in which all equipment is in working order;

d. to provide and maintain fire and disaster plans and equipment on each floor, including smoke detection devices and exit signs that are visible during power failure;

e. to work with the building managers and GSA to ensure safe electrical equipment and adequate ventilation in all work areas;

f. to make all reasonable efforts to provide an environment free of roaches and rodents through a regular extermination program and by other measures as may be necessary for purposes of pest control;

g. to follow GSA regulations in providing facilities appropriate and adequate to accommodate the needs of qualified handicapped employees;

h. to inform the Union of any decision to introduce new office equipment into the bargaining unit employee's work space so that the Union may, thereafter, request impact bargaining concerning the new equipment; and

i. to permit a bargaining unit employee who regularly works on a video display terminal for extended periods of time to be provided safety devices or protective equipment in order to prevent injury or relieve physical complaints resulting from the continuous use of the terminal. Requests for such equipment will be processed through appropriate management channels, consistent with work needs, and subject to availability of funds. Documentation supporting

the request shall consist of acceptable medical documentation or certification by the Employer of the need for the equipment.

Section C. Union Responsibilities

The Union agrees that it will take appropriate action to encourage all bargaining unit employees to work safely with due consideration for the safety, health and comfort of all fellow employees. To avoid preventable unhealthy or unsafe working conditions, the Union will encourage respect and care by bargaining unit employees for the Employer's facilities and equipment and their own work environment. Each bargaining unit employee has a duty and is encouraged to report any unsafe or unhealthy working conditions to his/her immediate supervisor as soon as any such conditions come to his/her attention.

Section D. Employee Reports of Unsafe or Unhealthy Working Conditions

1. Any employee who believes that an unsafe or unhealthy condition exists shall have the right and is encouraged to report in writing the unsafe or unhealthy working condition to his/her immediate supervisor. The Employer will ensure a response to a written employee report of hazardous conditions within twenty-four (24) hours for imminent dangers, three (3) working days for potential serious conditions, and twenty (20) working days for other than serious health and safety conditions.

2. The Employer will investigate the reported condition as soon as is practicable, and, at its discretion, may refer the situation to the Department's Safety and Health Program Manager and/or other appropriate officials for further investigation. Normally a Union representative will be given an opportunity to accompany any inspector who responds on such a complaint during the inspector's physical inspection of the workplace. If the Union

representative assigned to the matter does not have an appropriate security clearance or access authorization, the Union will select an appropriately cleared alternate steward to perform the representational functions. During the course of an inspection, any employee who works in the establishment shall be able to bring to the attention of the inspector any unsafe or unhealthful working condition which the employee has reason to believe exists in the workplace. However, an inspection may not be necessary if, through normal management action and with prompt notification to employees and the Union, the hazardous condition(s) can be abated immediately.

3. If a bargaining unit employee is assigned duties which he/she reasonably believes could possibly endanger his/her health or well-being, the employee will immediately notify his/her immediate or second-line supervisor of the situation. If the supervisor cannot solve the problem and agrees with the bargaining unit employee, the supervisor will, under normal circumstances, delay the assignment and refer the matter through the proper channels for appropriate action, unless the delay would unduly interfere with the Employer's work needs. Where the supervisor does not agree with the bargaining unit employee's concerns, except as described in paragraph 4 below, the employee will perform the assignment but has the right to consult the Union and the right to file a report in accordance with DOJ Order 1779.2A.

4. The employee has the right to decline to perform his/her assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures.

5. If the Employer determines that a hazardous condition exists which affects bargaining unit employees, the Employer shall

advise the Union and the involved bargaining unit employees as soon as possible. Upon request, the Employer will meet with the Union and to the extent required by law, rule or regulation, negotiate and/or consult with the Union regarding the matter.

6. The Employer will take measures to ensure prompt abatement of unsafe or unhealthy working conditions found to exist by the Employer in conjunction with JMD, GSA, Occupational Safety and Health Administration (OSHA), Public Health Service (PHS) and/or other appropriate officials. When this cannot be accomplished, the Employer agrees to develop an abatement plan setting forth a timetable for abatement and a summary of interim steps to protect employees. When the hazard cannot be abated without the assistance of GSA or other Federal lessor agency, the Employer agrees to work with the Justice Management Division to seek abatement.

7. The Employer will inform the Union of toxic chemicals, such as paint or pesticides, that will adversely affect the health or safety of employees, as soon as it is aware that such chemicals will be used. The notice will include any warning statements given to the Employer by the organization using the chemicals. Employees who may be adversely affected by such chemicals will be allowed to work in unexposed areas, if possible.

8. As set forth in DOJ Order 1779.2A no employee shall be subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthful working condition, or other authorized participation in the Department Occupational Safety and Health Program activities.

Section E. Health Unit

1. The Employer currently participates in the Federal Employee Occupational Health (FEOH) program administered by the Public Health Service, U.S. Department of Health and Human Services. The Employer agrees for the life of this Agreement to continue participating in the FEOH or equivalent program if it is available and if sufficient funding is provided by the Department of Justice. Under that program, and at the discretion of the Public Health Service or equivalent provider, bargaining unit employees can expect to receive, at no cost, or in some cases nominal cost, access to the following services:

a. Emergency Treatment and Ambulance Service

emergency first treatments of injury or illness to employees and transients within the premises on which the health unit is located. In cases where the necessary first treatment for an emergency is outside the capability of the health unit staff or facility, arrangement for conveyance of the employee or other person to a nearby physician or community medical facility may be provided at the request of, or on behalf of, the injured person. The health unit staff will assist in obtaining emergency ambulance service for any ill or injured person requiring ambulance transport.

b. Health Examination

complete voluntary medical examinations, in accordance with an annual quota assigned to each participant agency. Such examinations will include, but not be limited to, the following:

(1) medical history and physical examination;
(2) tonometry for glaucoma and visual acuity;
(3) proctosigmoidoscopy, as clinically indicated;

(4) breast examination, pelvic examination and papanicolaou smear;
(5) electrocardiogram;
(6) urinalysis;
(7) routine blood tests to include complete blood count and blood chemistry tests such as cholesterol, blood sugar, etc.;
(8) counseling of the employee as to significant findings.

These examinations may be modified in content as medical standards for preventive health examinations improve or advance in the future.

For each fiscal year in which complete medical examinations are being offered, the Employer will reserve a percentage of slots for bargaining unit employees on a first come, first served basis commensurate with the percentage of bargaining unit employees in the workforce of each of the Legal Divisions/OSG. Reserved slots that have not been requested by bargaining unit employees within 30 days after being offered will be made available to all employees.

c. Immunizations

selected immunizations, e.g., influenza and tetanus-diphtheria, via weekly immunization clinics. Necessary immunizations will be provided for employees who engage in official travel or whose work involves special occupational hazards.

d. Health Promotion and Education

an organized program to assess the employee's health status and life-style and to motivate the employee to improve his/her health status through individual and group education and

counseling activities on a periodic basis (e.g., AIDS, cholesterol management, weight control, stress).

e. Mental and Emotional Health Referrals

the health unit professional staff will provide referral to appropriate mental health services, including employee counseling service programs, where appropriate.

2. The health unit may provide some or all of the following services: occupational health surveillance examination; pre-employment examinations; and certain treatments, e.g. vitamins and allergens, requested by the employee's private physician (the employee must furnish the medication).

3. In addition to the above, the Employer will:

   a. provide to the Union copies of published occupational health hazard surveys of the work environment, which are conducted by officials of the Public Health Service; and

   b. in the event a bargaining unit employee becomes incapacitated on the job, notify Health Unit personnel who may call for emergency transportation if deemed appropriate.

4. The services which the Health Unit or equivalent provides may change if the contract between the Employer and the Public Health Service or equivalent is changed or ended. In such circumstances, the Employer will provide the Union with reasonable notice, and the Union will be given the opportunity to negotiate impact and implementation as provided by applicable rule, law, or regulation.

5. To protect the employees served, the Health Unit maintains the confidentiality of all Health Unit transactions and records in

accordance with medical ethics and the Federal Privacy Act of 1974.

Section F. Occupational Injury or Illness

When an employee sustains a job-related injury or occupational illness, the employee will report the injury or illness to his/her supervisor as soon as practicable. The supervisor will refer the employee to the Personnel Office within the employee's Legal Divisions/Office of the Solicitor General, the Health Unit or other medical service as appropriate and as permitted by applicable law, rule or regulation. The supervisor will also advise the employee to contact the Personnel Office within the employee's Legal Divisions/Office of the Solicitor General to obtain information on benefits under the Federal Employees' Compensation Act.

Section G. Employee Assistance Program

1. Under DOJ Order 1792.1B, JMD provides an Employee Assistance Program for all employees and family members of the Legal Divisions/Office of the Solicitor General of the Department of Justice. The Employee Assistance Program provides short-term counseling, assessment, and referral assistance for employees and members of their families who are experiencing emotional, marital, family problems, or financial distress. Such counseling is confidential, except in those instances when the employee/client has been determined to be a danger to himself/herself, or to others, and in instances where child, elder, or spouse abuse has occurred, or as may be required by State reporting requirements and/or Federal law. The Employer will make employees and supervisors aware of the program at least annually.

2. All employees, including those whose performance is negatively affected by chemical dependency, will be given a reasonable opportunity to obtain professional assistance by referral for

treatment to community resources such as alcohol treatment programs, community drug treatment programs, and as appropriate, private practice clinicians, on a confidential basis as provided in Section G.1 of this Article. Managers shall encourage employees to participate in the Department of Justice Employee Assistance Program. When the Employer determines that a conduct or performance problem exists, the Employer may take appropriate disciplinary or adverse action. The employee's involvement in EAP may be considered by the responsible supervisory official in determining any appropriate disciplinary and adverse action.

3. The Employee Assistance Program offers referral services to outside resources which may be covered by the employee's health benefits policy; or which provide a sliding scale fee system; or which may not charge a fee.

4. Employees undergoing a prescribed program of treatments for problems recognized under this Article or under DOJ Order 1792.1B will be granted sick leave on the same basis as any other illness when absence from work is necessary.

5. Employees with alcohol problems who voluntarily request assistance, participate in, and complete a prescribed program of treatment will normally not be disciplined for the alcohol problem itself. Employees with illegal substance abuse problems who voluntarily request assistance, participate in, complete a prescribed program of treatment, and remain drug-free, will normally not be disciplined for the substance abuse problem itself.

6. Nothing contained in this Article should be construed as a grant of immunity from prosecution for illegal drug possession, trafficking or use, or for any other crime.

7. The Employer agrees for the life of this Agreement to continue participating in the Employee Assistance Program if it is available and if sufficient funding is provided by the Department of Justice.

Section H. Occupant Emergency Plan

The Employer maintains an Occupant Emergency Plan for all government-owned/leased buildings that are occupied by Local 3719 bargaining unit employees. The plan designates monitors in accordance with the controlling DOJ/GSA regulations. Such regulations may provide for area monitors, stairwell monitors, elevator monitors, monitors to assist the handicapped and restroom monitors for each floor, and describes the duties and responsibilities of these persons during an emergency. A copy will be given to the Union upon request.

Article 25

Actions Based on Unacceptable Performance

Section A. Purpose

1. Since performance appraisal is a continuous process, the following procedures shall be followed at any time during the year when the Employer concludes that a bargaining unit employee's performance is below Level 3 (fully successful or equivalent).

2. The procedures described in this Article apply to adverse actions based on unacceptable performance processed under 5 U.S.C. 4303, and other applicable law, rule, regulation, and DOJ Orders. The procedures which apply to actions based on misconduct or a combination of misconduct and unacceptable performance are addressed in Article 26 (Actions Based on Misconduct) of this Agreement.

Section B. Discussions

There must be a discussion between the Employer and the bargaining unit employee for the purpose of:

1. advising the bargaining unit employee of specific shortcomings between observed performance in the critical element(s) under scrutiny and the performance standard(s) associated with the particular element(s); and

2. providing the bargaining unit employee with a full opportunity to explain the observed deficiencies.

Section C. Performance Improvement Period

For unacceptable performance, reduction in grade or removal are options, but only after the bargaining unit employee has been given a reasonable opportunity period to demonstrate acceptable performance on the critical element(s) rated unacceptable unless, in accordance with 5 CFR 432.105, the employee has had a performance improvement period on the same critical element within the last year.

1. Prior to initiating an action to remove or downgrade an employee for unacceptable performance, the employee must be given in writing:

    a. Notice of unacceptable performance in one or more critical elements of the employee's performance standards together with a specific period of time (normally, between thirty and sixty days) to bring performance to an acceptable level. A longer period may be warranted depending on the nature of the employee's position and the performance deficiency involved. During the improvement period, the employee will be given the opportunity to work on those portions of the job that are unacceptable, but not to the exclusion of other work assignments. This will ensure that the employee receives adequate work time and assistance in order to improve the area that has been declared unacceptable;

    b. information as to how the supervisor will assist the employee in that effort;

    c. information as to what the employee must do to bring performance to an acceptable level in that period.

2. At the employee's request, the Employer will provide feedback on performance through discussions at the mid-point of the performance improvement period.

The Parties recognize that this is a performance counseling session between the supervisor and employee. Union attendance in the capacity of an observer at such a mid-point meeting of a PIP must be specifically requested by the employee and agreed to by management. The Parties encourage and wish to facilitate full and direct communication between supervisors and employees on performance issues. (See Addendum, dated March 29, 2001)

3. At the conclusion of the performance improvement period, the Employer will notify the employee of his/her performance level. This discussion will occur within a reasonable period, normally thirty (30) days, after the end of the performance improvement period. Following this discussion, a written notification to the employee will be prepared which states that the employee's performance remains unacceptable or has improved to a satisfactory level.

4. If the determination is that the employee's performance is unacceptable, the Employer may reassign the employee upon written notice that includes a statement of grievance rights or, as set forth in Section D below, propose to remove or demote the employee.

Section D. 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 of:

1. the nature of the proposed action;

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

3. 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 the Union or other representative;

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

Section E. Final Decision

The Employer shall issue a final decision within a reasonable amount of time after the conclusion of the reply period. In arriving at its decision the Employer shall consider only the reasons specified in the notice of proposed action and shall consider any answer of the employee and/or his/her representative. The decision will state which reasons were relied on in making the decision. The Employer shall issue written notice of its decision to the employee, normally at least five (5) days before the time the action will be effected.

Section F. Appeal Rights

A bargaining unit employee receiving an adverse action may grieve the final decision under the Grievance Procedure set forth in Article 27 of this Agreement, or may appeal to the Merit Systems Protection Board, but may not do both. Only the Union or the Employer may invoke arbitration. An individual employee may not invoke arbitration.

Section G. Disability Retirement

If the employee is the subject of an action based on unacceptable performance related to a disability, and the employee is eligible, and files for disability retirement and the Employer recommends approval, the Employer can consider a delay of the action to allow a determination to

be made concerning the disability retirement. When an application for disability retirement of an employee is approved, the employee, at his/her option, may use any available sick leave.

Section H. Applicability

The procedures addressed in this Article do not apply to probationary and temporary bargaining unit employees.

Section I. References to Supervisory Actions

References to the actions of supervisors or managers are provided for illustrative purposes only, and should not be considered a direct assignment of work for specific members of management. (See Addendum dated March 15, 2001)

Article 26

Actions Based on Misconduct

Section A. General Provisions

1. The parties agree it is important that the supervisor/employee relationship encourage early recognition and resolution of potential performance or conduct problems. Communications are particularly important in situations which could lead to disciplinary and/or adverse actions.

2. For the purpose of this Article, a disciplinary action is defined as a letter of reprimand, or a suspension of fourteen (14) days or less.

3. For the purpose of this Article, an adverse action based upon misconduct is defined as a suspension for more than fourteen (14) days, reduction in grade, or removal.

4. The procedures described in this Article apply to disciplinary and/or adverse actions based on either misconduct, or a combination of misconduct and unacceptable performance, processed under 5 U.S.C. 7503, or 7513, DOJ Order 1200.1, and other applicable law, rule and regulation (provided that if any conflict exists between applicable DOJ Orders and this Agreement, absent compelling need, the provisions of this Agreement will apply). The procedures which apply to actions based on unacceptable performance are addressed in Article 25 of this Agreement.

5. Where appropriate and at its own discretion, the Employer shall apply a progression of disciplinary measures in an effort to correct the conduct of a bargaining unit employee.

6. Bargaining unit employees will be disciplined and/or subjected to adverse actions for such cause as will promote the efficiency of the service, in accordance with applicable law, rules, and regulations.

Section B. Union Rights

The Union will, upon being designated by the employee as representative, have the right to represent and to speak on behalf of the employee. The designated representative also will have the right to be present at any oral response or any other formal disciplinary or adverse action meeting involving the employee and a representative of the Employer. The Union representative will be given official time for such purposes in accordance with Article 5 of this Agreement. The parties agree that this does not include the right to be present at the delivery of the proposal or decision notice.

Section C. Procedures for Actions Based on Misconduct

1. Letter of Reprimand

A letter of reprimand will state the nature of the offense, the specific reasons supporting the action, any needed corrective action, and appropriate grievance rights. The letter will also advise the employee that the reprimand will be retained in the official personnel folder for a period of up to two years; however, at the supervisor's discretion the reprimand may be removed from the OPF at any time.

2. Suspensions of fourteen (14) days or less

a. Notice of Proposed Action. An employee who receives a proposal for suspension of 14 days or less is entitled to advance written notice which informs the employee of:

(1) the proposed action;

(2) the specific reasons for the proposed action;

(3) the time to reply and furnish affidavits and other documentary evidence in support of the reply;

(4) the right to be represented by the Union or other representative;

(5) the right to make an oral and/or written reply and to receive a written decision with appeal rights. The Employer may grant a specific extension of time for the employee's response upon the employee's written request to the Employer's designated agent, or to the alternate to that agent;

(6) the opportunity to review the evidence that is relied upon to support the charges.

b. Final Decision. The Employer shall issue a final decision letter within a reasonable time after the conclusion of the reply period. In arriving at its decision the Employer shall consider any answer of the employee and/or his/her representative and explain the reasons for the decision. The Employer shall issue written notice of its decision to the employee, normally, at least two days before the time the action will be effected.

3. Suspensions of more than fourteen (14) days, reductions in grade and removals

a. Notice of Proposed Adverse Action. Unless otherwise provided by law, rule or regulation (e.g., the crime provision, 5 U.S.C. 7513(b)), an employee who receives a proposal for

an adverse action is entitled to at least thirty (30) days advance written notice which informs the employee of:

(1) the proposed action;

(2) the specific reasons for the proposed action;

(3) the time to reply and furnish affidavits and other documentary evidence in support of the reply;

(4) the right to be represented by the Union or other representative;

(5) the right to make an oral and/or written reply and to receive a written decision with appeal rights. The Employer may grant a specific extension of time for the employee's response upon the employee's written request to the Employer's designated agent, or to the alternate to that agent;

(6) the opportunity to review the evidence that is relied upon to support the charges.

b. The Employer shall issue a final decision within a reasonable amount of time after the conclusion of the reply period. In arriving at its decision the Employer shall consider only the reasons specified in the notice of proposed action and shall consider any answer of the employee and/or his/her representative. The decision will state which reasons were relied on in making the decision. Except for removals, the Employer shall issue written notice of its decision to the employee, normally at least five (5) days before the time the action will be effected. In the case of a written notice of a decision to remove, the notice will be issued normally at least two (2) days before the action will be effected.

4. A bargaining unit employee may grieve a final decision of a disciplinary action under the Grievance Procedure set forth in this Agreement. A bargaining unit employee receiving an adverse action may grieve the final decision of an adverse action under the Grievance Procedure set forth in this Agreement, or may appeal to the Merit Systems Protection Board, but may not do both as further set forth in Article 27 (Grievance Procedure), of this Agreement. Only the Union or the Employer may invoke arbitration. An individual employee may not invoke arbitration.

Section D. Data

To the extent that information and data exists, the Employer will provide the Union, upon written request, with the following statistical information:

1. the number of involuntary terminations during a given year;

2. the number of adverse and disciplinary actions during a given year.

Article 27

Grievance Procedure

Section A. Purpose

The purpose of this Article is to provide a mutually acceptable method for prompt and equitable resolution of grievances.

Section B. Definitions

1. Grievance

The term "grievance" means any written and signed complaint directed to the Employer--

a. by any bargaining unit employee for personal relief concerning any matter not excluded by applicable law or the terms of this Agreement relating to the conditions of employment of the bargaining unit employee;

b. by the Union for personal relief for any bargaining unit employee concerning any matter not excluded by applicable law or the terms of this Agreement relating to the conditions of employment of any bargaining unit employee; or,

c. by any bargaining unit employee, the Union, or the Employer concerning --

(1) the effect or interpretation, or a claim of breach, of this Agreement; or

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

d. or any written complaint by the Employer to the Union as defined in Section E(2)(b).

2. Personal Relief

The term “personal relief” means a specific remedy directly benefitting the grieving bargaining unit employee, but does not include a request for discipline or other action affecting another employee, including a supervisor or management official.

3. Collective Bargaining Official

The Collective Bargaining Official (CBO) is the management representative(s) of the Employer to whom authority to adjust grievances over the interpretation of the Collective Bargaining Agreement or any other grievance which involves more than one of the Legal Divisions/Office of the Solicitor General, has been delegated.

4. Employer Grievance

The term "Employer Grievance" means a grievance filed by the Employer against the Union involving the interpretation and/or application of this Agreement or other violation of law, rule or regulation.

Section C. Scope of Procedures

1. The procedures set forth in this Article shall be the exclusive procedures available to bargaining unit employees and to the parties to this Agreement for resolution of grievances covered under the terms of this Agreement.

2. The following matters are NOT grievable and are specifically excluded from the coverage of this Article:

a. any claimed violation of Subchapter III of Chapter 73 of Title 5, United States Code, relating to prohibited political activities;

b. retirement, life insurance, or health insurance;

c. a suspension or removal under Section 7532 of Title 5, United States Code, concerning National Security;

d. any examination, certification, or appointment;

e. the classification of any position which does not result in the reduction in grade or pay of an employee, or which has been appealed to and adjudicated by OPM;

f. non-selection for promotion from a group of properly ranked and certified candidates as excluded by Article 8 of this Agreement;

g. termination of a probationary employee during the probationary period and termination of a temporary employee during his/her temporary appointment, as excluded by Article 14 of this Agreement;

h. failure to pay an award, or the amount of an award, to bargaining unit employees;

i. the issuance of guidance to employees in the form of a counseling memoranda, e.g., a leave restriction letter; a Performance Improvement Plan;

j. the issuance of a preliminary warning or proposal of an action which, if effected, would be covered under this procedure or under a statutory appeals procedure;

k. matters which are not subject to the control of the Employer, including garnishment of wages;

l. any matter that any court or the FLRA has ruled to be an excessive interference with management rights.

3. An aggrieved bargaining unit employee affected by a prohibited personnel practice under 5 U.S. C. 2302(b) may raise the matter under the appropriate statutory procedure or under this procedure, but may not do both. A bargaining unit employee shall be deemed to have exercised his/her option under this provision at such time as the bargaining unit employee initiates an action under the applicable statutory procedure or files a grievance in writing under this procedure, whichever occurs first.

4. An aggrieved bargaining unit employee affected by matters covered under Sections 4303 and 7512 of Title 5, United States Code, may raise the matter under the appropriate statutory procedure or may, with the consent of the Union, proceed to binding arbitration under this procedure, but may not do both. A bargaining unit employee shall be deemed to have exercised his/her option under this provision at such time as the bargaining unit employee initiates a notice of appeal under the applicable statutory procedure or invokes arbitration with the consent of the Union in writing under this procedure, whichever event occurs first.

Section D. Representation

1. Any bargaining unit employee or group of bargaining unit employees may present a grievance covered under the terms of this Agreement to the Employer under this Article. The Union as exclusive representative, or its designated representative, shall be the only representative used by a bargaining unit employee or group of bargaining unit employees under this procedure, except that a bargaining unit employee or group of bargaining unit

employees may elect to represent himself/herself or themselves in a grievance.

2. If a bargaining unit employee or group of bargaining unit employees elects to represent himself/herself or themselves, the employee(s) shall notify the Union. The Employer shall give the Union an opportunity to be present at any grievance discussion conducted under the negotiated procedure.

3. When bargaining unit employees choose to be represented by the Union, all written correspondence related to the grievance shall be addressed to and sent to a Union official designated in writing by the grievant to receive such correspondence.

Section E. Procedures

1. Informal Resolution

The Employer, the Union, and bargaining unit employees are strongly encouraged to make reasonable efforts to resolve potential grievances prior to the filing of a formal grievance. Attempts at informal resolution of grievances will not automatically extend the time limits for filing grievances. Any extension of grievance time limits must be agreed upon by the parties in writing. Such agreement shall be at the sole discretion of the Parties.

2. Grievance Format and Content

a. Employee or Union Grievances

(1) A grievance by a bargaining unit employee or group of bargaining unit employees, or by the Union, must be written and signed by the grievant(s) and submitted on Form LLMR 2 (Appendix 2).

(2) The grievance must contain a clear and plain statement of the complaint being made; the personal relief requested; and whether a meeting with the Employer is being requested. The grievance must also contain factual detail sufficient to enable the Employer to investigate and assess the grievance; to determine whether the grievance relates to something within the Employer's control; and to determine whether the personal relief requested is within the Employer's control to provide.

(3) Grievances alleging a violation of, or failure to comply with, the terms of this Agreement must identify the Article, and specific provision thereof, that forms the basis of the grievance. The grievance must also identify the grievant's designated representative. Any grievance not containing the information noted above shall be considered void and must be rejected without further consideration. Such a void grievance can not vest an arbitrator with jurisdiction under the provisions of Article 28 (Arbitration).

(4) Grievances concerning performance appraisals must include a copy of the disputed appraisal, and must identify the specific element grieved and the change sought to the rating for the element.

b. Employer Grievances

Grievances by the Employer shall be written and signed and must contain a clear and plain statement of the complaint being made and of the relief requested, and factual detail sufficient to enable the Union to investigate and assess the grievance and to determine whether the relief requested is within the Union's control to provide. Grievances by the Employer alleging a violation of, or failure to comply with, the terms of this Agreement must identify the Article, and

specific provision thereof, that forms the basis of the grievance.

3. Procedures for Employee Grievances

a. Step One. A grievance must be filed with the grievant's Executive Office no later than fifteen (15) workdays from the date of the act or occurrence giving rise to the grievance, or from the date on which the bargaining unit employee knew, or had reason to know, of the act or occurrence. However, in no instance may a grievance be filed more than one (1) year from the date of the act or occurrence which gave rise to the grievance. The grievance must be in writing, and it must be signed by the grievant. The Executive Office will determine the appropriate level of supervision with authority to adjust the grievance (including the CBO if appropriate) and refer the grievance to that level within five (5) workdays of receipt of the grievance. The Executive Office will notify the Union of the identity of the deciding official and the date of receipt of the grievance by the deciding official. If the deciding official feels that a meeting would be useful and/or if the Union or the bargaining unit employee(s) has requested it, the deciding official will meet with the grievant and/or the Union to discuss the grievance prior to issuing his/her decision. The Executive Office will contact the Union within five workdays following receipt of the grievance to schedule the grievance meeting if the deciding official feels that a meeting would be useful and/or if the Union or the bargaining unit employee(s) has requested it. The deciding official shall render a written decision to the designated Union representative within twenty (20) workdays from receipt of the grievance, or within ten (10) workdays from the conclusion of such meeting, whichever is later. The decision will include the name and title of the designated official to whom the grievance may be directed if it is not resolved at this step, or, if appropriate as

determined by the Employer, that this is the final step in the grievance process under this Article.

b. Step Two. If the grievance is not resolved at Step One of this procedure, and a second stage is appropriate, the grievance may be submitted to the deciding official designated in the Step One decision. The Step Two grievance must be in writing and submitted to the designated deciding official within seven (7) workdays from receipt of the decision at Step One. If the Union or bargaining unit employee wishes a meeting with the Step Two deciding official, the request must be made in writing at the time of the Step Two grievance submission. If the deciding official feels that a meeting would be useful and/or if the Union or the bargaining unit employee has requested it, the Step Two official may meet with the grievant and/or the Union to discuss the grievance prior to issuing his/her decision. The Step Two deciding official shall render a written decision to the designated Union representative within fifteen (15) workdays from receipt of the grievance, or within ten (10) workdays from the conclusion of such meeting, whichever is later. This decision is the final decision under this procedure.

c. In the event that a group of separate individually filed grievances demonstrates a commonality of interest, the Employer may, with the consent of the Union, treat such grievances as having been filed by, or on behalf of, a group of bargaining unit employees and may consolidate the individual grievances for determination.

d. Final decisions issued under this procedure, or under the provisions of Article 28 (Arbitration), will not be precedential for purposes of the interpretation and/or application of this Agreement. Neither will decisions issued under this procedure impact the past practice or policy of any of the

Legal Divisions/OSG other than the Legal Division or OSG involved in the grievance.

4. Procedures for Employer Grievances

A grievance by the Employer shall be submitted in writing to the Chief Steward or designee within fifteen (15) workdays of the event giving rise to the grievance, or from the date of the Employer's knowledge of this event. The Chief Steward will respond in writing to the grievance within fifteen (15) workdays of receipt of the grievance. The decision of the Chief Steward shall specify that it is the Union's final decision on the grievance.

5. No Expansion of Issues

The issues or remedies requested at the initial filing of the grievance may not be expanded in any fashion at any step of the grievance process.

Section F. Time Limits

1. Failure to Comply

a. Unless mutually agreed upon, all time limits contained in this Article shall be strictly observed.

b. Failure by the Union, Employee or Employer upon submitting a grievance to adhere to the time limitations for filing a grievance at any step of the procedure will result in rejection of the grievance in accordance with Section H below. Informal attempts to resolve a potential grievance will not extend the time limits for filing, unless an extension is mutually agreed upon.

c. When Management has not issued a decision in a grievance within the time frames established by this Agreement, absent a mutually agreed-upon extension of those time frames, the Union may submit, in writing, a request to the Executive Officer to expedite resolution of the grievance. The Executive Officer will, within five (5) workdays, either ensure issuance of a decision letter in the grievance, request from the Union a mutually acceptable extension of time to issue a decision, or notify the Union that a decision will not be forthcoming.

d. In the event that either the Union or the Employer fails to timely respond to a grievance, either party may proceed to the next step of the grievance process or if in the final step of the grievance process, invoke arbitration on its grievance pursuant to the provisions of Article 28 of this Agreement. The exception to this provision is where the responding party at any given step of the grievance is absent from duty in an approved leave status. In such cases, the time limits for response shall be extended the amount of time commensurate with the absence on a day for day basis.

2. Computation of Time

In computing periods of time for purposes of this Article, day one in the computation means the day following the act or event giving rise to the grievance. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, a legal holiday, a day other than a legal holiday when the Employer's Office is closed, or a day on which a liberal leave policy is in effect due to inclement weather, in which event the period runs until the end of the next day which is not one of the aforementioned days.

Section G. Service of Grievances and Grievance Decisions

1. Grievances and grievance decisions must be served at each step of the procedures established by this Article by hand delivery to the appropriate person's office, desk, or work station.

2. Service of grievance decisions on the employee's designated Union representative shall constitute service on a bargaining unit employee.

3. Service of grievance decisions on the Union President or other Union officer or official shall constitute service on a group of bargaining unit employees who have filed a group grievance when the group is represented by the Union in the grievance.

4. Service on a group of bargaining unit employees not represented by the Union shall be made on any single member of the group.

5. Grievance decisions by the Union shall be served on the Chief, Employee and Labor Relations Staff, Justice Management Division, or designee.

Section H. Rejection of Grievances

1. A grievance must be rejected if:

   a. it was not filed within the specified time limits;

   b. it consists of a matter or matters excluded from the coverage of the grievance procedures;

   c. it contains no specific request for personal relief (or other appropriate relief in the case of a grievance filed by the Union);

   d. the remedy requested by the grievant would not directly affect that individual's conditions of employment;

e. in the case of a group grievance, there is no commonality of interest between or among members of a group of bargaining unit employees; or

f. failure to include on the grievance form all information required in section E.2.A of this Article.

2. If the Grievance is rejected, the Union may proceed to arbitration on behalf of the grievant, but solely on the issue of the factual basis for the rejection of the grievance. If the arbitrator determines that the grievance is deficient in one of the areas enumerated above, the arbitrator must uphold the rejection of the grievance. The arbitrator shall have no authority to conduct any proceedings, including but not limited to a hearing on the merits of the grievance, until he/she has determined that the grievance was improperly rejected. If the arbitrator finds no factual basis for the rejection of grievance, the rejection of the grievance shall be invalidated and the grievance will be processed in accordance with the provisions of this Article.

Article 28

Arbitration

Section A. Applicability

Any grievance under the terms of this Agreement which is not resolved may be subject to binding arbitration. Arbitration may be invoked only by the Union or the Employer.

Section B. Preliminary Procedures

1. Notice

Either the Union or the Employer may invoke arbitration by serving a notice on the other within thirty (30) days following receipt of the final decision under Article 27 (Grievance Procedure). The notice shall identify the grievance and the specific relief requested and shall be signed and dated by the authorized representative on behalf of the party submitting the matter to arbitration. Failure to invoke arbitration within the time specified shall waive the right to seek arbitration.

2. Selection

Within seven (7) days from invoking arbitration, the party that invoked arbitration shall request a list of five (5) impartial arbitrators from the Federal Mediation and Conciliation Service (FMCS) by submitting a jointly executed FMCS Form R-43 entitled "Request for Arbitration Panel." Any fees required by the filing of form R-43 will be equally shared by the Employer and the Union. The moving party will prepare the form and will provide the other party the opportunity to make changes to the form before the form is jointly submitted. Within fifteen (15) days from receiving a list of arbitrators from FMCS the parties

shall meet to select an arbitrator. If the parties cannot agree upon an arbitrator, the parties shall each strike one (1) name from the list alternately and then repeat this procedure until only one name remains. The person whose name remains shall be selected as the arbitrator. The party striking the first name from the list in each case shall be chosen by a coin toss. At any time the parties may agree to obtain a new list of arbitrators from the FMCS. If either party refuses to participate in the selection process, the other party will make a selection of an arbitrator from the list. These time limits may be extended by mutual agreement.

3. Time and Place

The arbitration hearing will be held, if possible, on the Employer's premises, unless otherwise mutually agreed.

Section C. Cost

1. Arbitration Fees

The arbitrator's fees and expenses shall be borne by the losing party, except that in any decision not clearly favoring one party's position over the other, the arbitrator may specify that all costs should be borne equally by the parties.

2. Implementation Disputes

If a dispute arises regarding the application or implementation of an arbitrator's decision or clarification 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.

3. Transcript Costs

The costs of the transcript requested by one party for its exclusive use and not shared shall be borne by the requesting party. If it is mutually agreed to request a transcript, the cost will be borne equally.

4. Attorney Fees

An employee or the Union may receive attorneys fees in accordance with 5 U.S.C. § 5596, and other applicable law.

Section D. Authority of Arbitration

The arbitrator shall be bound by the terms of this Agreement and shall have no authority to add to, subtract from, alter, amend or modify any provision of this Agreement. This Agreement constitutes the entire agreement between the parties and there are no other agreements, written or oral, which affect the terms of this Agreement. In construing and interpreting this Agreement, the Arbitrator shall be bound by the plain language contained within its four corners. Evidence extrinsic to this Agreement shall not be received or considered by the Arbitrator in interpreting or construing this Agreement except with respect to any particular provision which is ambiguous.

Section E. Arbitration Procedures

1. Arbitrability

Issues concerning the arbitrability of a grievance presented for arbitration under the terms of this Agreement shall be resolved by the arbitrator on written motion, or, if either party requests, a hearing, in advance of any scheduled arbitration hearing to decide the merits of the case. The arbitrator's decision on any such issue shall be communicated in writing to the respective parties at least

ten (10) days prior to a scheduled arbitration hearing. Unless otherwise mutually agreed to by the parties, no arbitration hearing may proceed unless and until the arbitrator has rendered a written decision on issues of arbitrability.

2. Availability of Witnesses and Parties

a. The grievant's Union Representative shall be authorized official time to prepare for the arbitration proceeding in accordance with Article 5 (Official Time). The grievant(s), who is in an active duty status, shall be excused from duty for a reasonable period of time to be interviewed by the Union representative in preparation for the arbitration proceeding without loss of pay or charge to leave. Any relevant and necessary witness, who is in an active duty status, shall be excused from duty for a reasonable period of time to be interviewed by the grievant's representative in preparation for the arbitration proceeding without loss of pay or charge to leave.

b. The grievant(s), the grievant's representative, and any employees designated as witnesses shall be excused from active duty status for a reasonable period of time to participate as a party or to testify as a witness in the arbitration proceeding without a loss of pay or charge to leave.

3. Testimony

All witnesses who testify in an arbitration hearing shall be placed under oath by a person qualified to administer oaths within the District of Columbia. The "rule on witnesses" shall apply in all arbitration hearings when it is requested by either party.

4. Findings of Fact and Conclusions of Law

a. 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.

b. In rendering a decision, the arbitrator shall issue adequate findings of fact and conclusions of law setting forth the basis for the decision. In cases where the arbitrator directs that particular relief be provided, the arbitrator shall issue findings of fact and conclusions of law setting forth the basis on which the relief has been ordered.

5. Alternative Arbitration Process

The parties may mutually agree to alternative arbitration procedures, such as an expedited hearing or a decision on stipulated facts. In the absence of such agreement, a formal arbitration hearing will be conducted by the arbitrator.

6. Finality of Decision

The arbitrator's decision shall be final and binding, unless an exception is filed with the Federal Labor Relations Authority, (or, as appropriate, with such other appellate jurisdiction as is described in 5 U.S.C. § 7121(d)). If no exception if filed, the arbitrator's decision and remedy will be implemented.

7. Disputes

Any dispute regarding the application or implementation of the arbitrator's award may be returned, by either party, to the arbitrator for resolution. It is understood that such return does not delay the time in which either party may file an appeal of the award.

Article 29

Mandated Changes to the Agreement and Mid-Term Negotiations

Section A. Agreements Under This Article

Any agreements reached under the provisions of this Article shall be deemed to be supplemental to this Agreement and subject to approval by the Attorney General as set forth in Article 31 (Effective Date and Duration) of this Agreement.

Section B. Mandated Changes

If a future statute, Executive Order, government-wide regulation or judicial decision requires the parties to change this Agreement, the Employer or the Union will notify the other, in writing, of proposed formal contract language to implement the change required. If either party desires to negotiate the impact and implementation of the proposed contract language, to the extent permitted by law, it shall notify the other within ten (10) days of the receipt of the invitation to negotiate. Such request to negotiate shall include a specific formal counterproposal for negotiations. Failure by either party to respond timely to the other's notice shall constitute a waiver of any right to negotiate on the proposed required change, and the proposed formal contract language will become part of this Agreement subject to approval by the Attorney General as set forth in Article 31. Neither party will be permitted to propose changes unrelated to the change specifically required by the law, Executive Order, government-wide regulation or judicial decision.

Section C. Reopener Clause

In accordance with this Agreement, either party may submit no earlier than the mid-point of the Agreement, no more than five (5) existing

articles, with the exception of Article 29, for midterm negotiations in accordance with the requirements of applicable law, rule, and regulations. Further articles may be reopened by mutual consent of the Parties.

Section D. Matters Outside the Scope of Negotiations During the Life of this Agreement

Except as provided elsewhere in this Article, and in the Article on impact and implementation bargaining:

1. this Agreement constitutes the entire agreement between the Parties concerning the subject matters addressed in its Articles, and those subject matters are not appropriate, absent mutual consent, for further negotiations during the life of this Agreement; and

2. any subject matters not addressed in this Agreement, absent mutual consent, are also not appropriate for negotiations until the expiration of this Agreement.

Section E. Negotiating Procedures

In addition to the requirements of Section A above, the procedures contained in this Section shall constitute the ground rules for negotiation under this Article, unless the Parties mutually agree to negotiate additional procedures.

1. Negotiations shall take place as soon as practicable during regular duty hours unless otherwise mutually agreed by the Parties.

2. The Employer will provide a site for negotiations.

3. The Union will be authorized the same number of Union representatives on official time as the Employer has representatives at the negotiating table.

4. Either Party may have a technical expert present as necessary who could provide information necessary to the successful completion of bargaining. Any technical expert for the Union may be granted appropriate official time for participation in the bargaining sessions.

5. Neither party may raise additional subjects of bargaining after submission of their initial proposals except by mutual agreement.

6. If agreement cannot be reached on the matters under negotiation, the following procedures shall apply:

a. Declarations of Impasse

(1) Neither party may declare an overall impasse until all Articles and Sections are agreed to or declared non-negotiable by the Employer or declared at an impasse by either party.

(2) The parties agree that each will use their good faith efforts to avoid an impasse in the negotiations. Before formally declaring any provision non-negotiable, the Employer will provide the Union seven (7) days notice of intent to take such action, unless unreasonable under all of the facts and circumstances. The Employer will also provide the Union with a statement of non-negotiability and reasons therefore, without prejudice to later supplementation of the reasons. During this period the Parties agree to meet to fully discuss the merits of the issue(s) and explore possible resolution.

b. Impasse Procedures

(1) In the event either party declares an impasse in negotiations, the Federal Mediation and Conciliation Service shall be requested to provide services and

assistance to resolve the dispute pursuant to 5 U.S.C. § 7119.

(2) If mediation services of the Federal Mediation and Conciliation Service do not result in resolution of the impasse, either party may invoke the services of the Federal Service Impasses Panel pursuant to 5 U.S.C. § 7119. Prior to taking such action, however, the party seeking to invoke the services of the Federal Service Impasses Panel must provide 14 days notice to the opposing party of its intention to take such action, unless unreasonable under all of the facts and circumstances.

Section F. Implementation

If the Union has timely requested negotiations regarding a mandated change, the Employer, will, where possible, delay the implementation of such change until such time as the parties reach agreement on all negotiable issues connected with the change, unless the Employer reasonably believes that there is a mandatory implementation date or contrary intent expressed by the source of the mandated change which requires implementation of the change prior to agreement. Notwithstanding this Section, nothing shall affect the authority of the Employer to take whatever actions may be necessary to carry out its mission during emergencies.

Article 30

Impact and Implementation of Changes in Conditions of Employment

Section A. Rights and Obligations of the Parties

Performance of the Employer's mission will from time to time require changes in personnel policies, practices, and other matters affecting the working conditions of bargaining unit employees. Although the Employer has the right to make such changes in the exercise of its rights or for any other reason associated with the accomplishment of its mission, the Employer recognizes its obligation, consistent with law and applicable regulation, to negotiate with the Union regarding the impact and/or implementation of any such proposed changes.

Section B. Definitions

1. Employees - The term “Employees” is intended to refer to bargaining unit employees only.

2. Physical moves are defined as “Major,” “Minor,” “Voluntary,” or “Emergency.”

3. Minor Move is defined as any move that involves eight (8) or fewer employees, unless the move includes a major physical alteration of the permanent structure of the space occupied by a bargaining unit employee, or relocation to another building. In the latter cases, the process will be handled as a major move.

4. Major Move is defined as any move that involves:

    a. more than eight (8) bargaining unit employees; or

b. a major physical alteration of the permanent structure of the space occupied by a bargaining unit employee; or

c. a relocation to another building.

5. Emergency Move is defined as a move where circumstances exist beyond the control of the LD's/OSG Executive Offices that result in time frames other than those established in this Article.

6. Voluntary Move is defined as any move that is requested by the employee and approved by the Employer regardless of any circumstance.

7. Reorganization is defined as the planned elimination, addition, or redistribution of functions of an organization or unit therein such that the official functional statement or organization chart describing the organization must be changed. The Employer agrees to make available to the Union information necessary for the Union to negotiate regarding a reorganization, pursuant to Section F of this Article.

8. Formal Notification is defined as a good faith effort to notify the Chief Steward and send a copy to the appropriate Union steward. Any changes in designation will be provided to the Employee/Labor Relations Staff in writing and three days in advance of implementation, or in exceptional circumstances, in accordance with Section C.4. of Article 5 (Official Time). The notification may be in writing, by facsimile or electronically transmitted. Receipt of the notification may be documented electronically, by facsimile, or in writing. The parties agree that the sending of the notification constitutes service to the Union. A hard copy of the floor plan will be provided for major moves.

9. Post Implementation Bargaining is defined as bargaining after implementation rather than bargaining to completion prior to the

implementation of a change in personnel policies, practices, or other matters affecting working conditions.

The Union will be afforded the opportunity to submit bargaining proposals concerning the change for up to 30 days after the implementation date of the change. In return, the Union agrees not to file unfair labor practice charges solely over implementation prior to completion of bargaining. However, the Union reserves all other rights pursuant to applicable laws and regulations.

10. Close-Out Memorandum is defined as the Employer's documentation of the agreement between the Parties concerning the physical move.

11. Union Steward is defined as the appropriate Union steward with jurisdiction over the organization involved.

12. Days is defined as calendar days unless stated otherwise.

Section C. Procedures

1. Minor Move

a. Normally, the Employer will provide the Union with formal notification at least seven (7) workdays in advance of the proposed implementation date of any minor move. At a minimum, the formal notification will contain the following information:

(1) impact of move;
(2) move schedule;
(3) list of employees affected;
(4) deadline for Union to request negotiations;
(5) floor plan, if appropriate.

b. Normally, the Union will be provided five (5) workdays from receipt of the formal notification to request negotiations and submit written proposals. If the Union fails to respond within the established deadline, the parties' bargaining obligation will be satisfied and the Employer will proceed with the move.

c. If the Union requests negotiation over the move, the first session will take place as soon as possible. The ground rules established by Section D of this Article will be followed during the process of negotiations.

d. At the end of the negotiating process a close-out memorandum will be prepared by the Employer.

e. These time frames may be modified by mutual agreement of the parties.

f. In lieu of the procedures described above, post implementation bargaining may be invoked by mutual agreement of the parties for any minor move.

2. Major Move

a. Normally, the Employer will provide the Union with formal notification at least twenty (20) workdays in advance of the proposed implementation date of any major move. At a minimum, the formal notification will contain the following information:

(1) floor plan;
(2) move schedule;
(3) list of employees affected;
(4) deadline for Union to request negotiations;
(5) reason for move.

b. Normally, the Union will be provided ten (10) workdays from receipt of the formal notification to request negotiations and submit written proposals. Additional Union proposals may be submitted within five (5) workdays from receipt of additional management information concerning the move. If the Union fails to respond within the established deadline, the parties' bargaining obligation will be satisfied and the Employer will proceed with the move.

c. If the Union requests negotiation over the move, the first session will normally take place within five (5) workdays of the Union's submission of proposals. The ground rules established by this Article will be followed during the process of negotiations.

d. These time frames may be modified by mutual agreement of the parties.

e. At the end of the negotiating process a close-out memorandum will be prepared by the Employer.

f. In lieu of the procedures described above, post implementation bargaining may be invoked by mutual agreement of the parties for any major move.

3. Emergency Move

Emergency moves will be processed under the following post implementation bargaining procedures:

a. Prior to the implementation of the move, the Employer will provide the Union with formal notification of the need for the emergency implementation. In addition, the formal notification will contain information concerning:

(1) impact of move;

(2) move schedule;
(3) list of employees affected;
(4) floor plan, if applicable;
(5) reason for identifying move as an emergency move.

To the extent possible, Union concerns will be taken into account prior to the implementation of the move.

b. After the implementation of the emergency move, the parties may negotiate as necessary under the provisions of post implementation bargaining as defined in Section B.9 of this Article.

4. Voluntary Move

When the Employer receives and approves a request from a bargaining unit employee for a voluntary move, the Employer will notify the Union in advance of the move.

5. Other Impact and Implementation Issues

Other issues subject to impact and implementation negotiation will be processed as follows:

a. Normally, the Employer will provide the Union with formal notification at least ten (10) workdays in advance of the proposed implementation date of any change requiring impact bargaining. At a minimum, the formal notification will contain the following information:

(1) the nature of the proposed change;
(2) implementation date or schedule;
(3) deadline for Union to request negotiations.

b. Normally, the Union will be provided seven (7) workdays from receipt of the formal notification to request negotiations

and submit written proposals. If the Union fails to respond within the established deadline, the parties' bargaining obligation will be satisfied and the Employer will proceed with the change.

c. If the Union requests negotiation over the change, the first session will take place as soon as possible. The ground rules established by this Article will be followed during the process of negotiations.

d. These time frames may be modified by mutual agreement of the parties.

e. In lieu of the procedures described above, post implementation bargaining may be invoked by mutual agreement of the parties.

Section D. Negotiating Procedures

The procedures contained in this Section shall constitute the ground rules for negotiation under this Article, unless the Parties mutually agree to negotiate additional procedures.

1. Negotiations shall take place as soon as practicable during regular duty hours unless otherwise mutually agreed by the Parties.

2. The Employer will provide a site for negotiations.

3. The Union will be authorized the same number of Union representatives on official time as the Employer has representatives at the negotiating table.

4. Either party may have a technical expert present as necessary who could provide information necessary to the successful completion of bargaining. Any technical expert for the Union

may be granted appropriate official time for participation in the bargaining sessions.

5. The Union may raise no additional subjects of bargaining after submission of their initial proposals except by mutual agreement, or under the post implementation bargaining procedure defined in Section B.9 above.

6. If agreement cannot be reached on the matters under negotiation, the following procedures shall apply:

a. Declarations of Impasse

(1) Neither party may declare an overall impasse until all proposals are agreed to or declared non-negotiable by the Employer or declared at an impasse by either party.

(2) The parties agree that each will use their good faith efforts to avoid an impasse in the negotiations. Before formally declaring any proposal non-negotiable, the Employer will provide the Union notice of intent to take such action. The Employer will also provide the Union with a statement of non-negotiability and reasons therefore, without prejudice to later supplementation of the reasons. During this period, the Parties agree to meet to fully discuss the merits of the issue(s) and explore possible resolution.

b. Impasse Procedures

(1) In the event either party declares an impasse in negotiations, the Federal Mediation and Conciliation Service shall be requested to provide services and assistance to resolve the dispute pursuant to 5 U.S.C. § 7119.

(2) If mediation services of the Federal Mediation and Conciliation Service do not result in resolution of the impasse, either party may invoke the services of the Federal Service Impasses Panel pursuant to 5 U.S.C. § 7119. Prior to taking such action, however, the party seeking to invoke the services of the Federal Service Impasses Panel must provide 14 days notice to the opposing party of its intention to take such action, unless unreasonable under all of the facts and circumstances.

Section E. Emergency Implementation

Notwithstanding any other provision contained in this Agreement, the Employer may implement changes to working conditions, pursuant to 5 U.S.C. § 7106 (a)(2)(D), to carry out the Employer's mission during emergencies.

Section F. Records

The Employer will provide to the Union, upon timely request and to the extent not prohibited by law, relevant records normally maintained by it in the regular course of business which are reasonably available and for which there is a particularized need, and which are necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of this Article and which do not constitute guidance, advice, recommendations, opinions, counsel, otherwise privileged material or training provided for management officials or supervisors.

Article 31

Metrocheks

Section A. General Provisions

The Employer and the Union recognize the benefits of encouraging the use of mass transit as directed by government-wide law, rule, regulation, or order. Accordingly, the Employer will provide a commuting subsidy in the form of monthly Metrocheks, in an amount required by government-wide law, rule, regulation, or order to each bargaining unit employee who submits to the Employer the required certification, subject to the following limitations:

1. Bargaining unit employees wishing to participate in the program will submit the required certification to their designated Division Coordinator by the 15th day of the month preceding the first month for which Metrocheks are requested. Employees who become eligible to participate at any time during the life of the program will likewise submit the required certification to their designated Division Coordinator by the 15th day of the month preceding the first month for which Metrocheks are requested.

2. The program may be terminated or modified for any one of the following reasons: if Section 629 of Public Law 101-509, Executive Order 13150 or other enabling law, rule, or regulation is revoked or is amended; if there is substantial abuse of the program, e.g., through false certification of eligibility, failure to notify the Employer of loss of eligibility under the terms of this article, transfer of Metrocheks, or other actions inconsistent with this Article. Should the program be terminated, the Union will be given reasonable advance notice and will be given an opportunity for impact and implementation bargaining.

Section B. Certification of Eligibility

Certification of eligibility will be made on a form specified by the Employer and signed by the employee. Certification will identify criteria for eligibility, including the statement that the employee's regular means of commuting to and from work is by a carrier covered under the Metrochek program, including but not limited to metrorail, metrobus, and authorized van pools. Certification will be required at the beginning of each employee's participation in the program, and periodically at the Employer's discretion.

Section C. Conditions for Termination

Employees who are approved to receive Metrocheks have an affirmative obligation to give prompt notice to the Employer should they no longer meet the requirements for participation in the program. Individuals whose commuting practices change are included in this requirement. Employees who fail to notify the Employer of such a change, and continue to accept Metrocheks under this Article, may be subject to disciplinary action.

Section D. Distribution

Metrocheks shall be available for pick-up by employees approved to receive them at sites designated by the Employer, on dates established by each component's Metrochek Coordinator.

Section E. Replacement of Lost or Defective Metrocheks

Due to the negotiable nature of the Metrochek, neither lost nor defective Metrocheks will be replaced by the Employer. An employee with a defective Metrochek may request a replacement from the Washington Metropolitan Area Transit Authority (Metro) in accordance with procedures established by Metro.

Section F. Restrictions on Use

Metrocheks issued under this Article are not transferable and are to be used only for commuting to and from work. Giving, selling, trading, and transferring Metrocheks issued under this Article to other individuals is prohibited. Purchasing or otherwise inappropriately acquiring Metrocheks issued under this Article from another individual is also prohibited, even if the other individual is eligible to receive the subsidy. The value of the Metrochek accepted by an employee may not exceed the expected cost of commuting for the period. At the time a new Metrochek is being issued, employees are responsible for notifying the disbursing agent of any unused portion of a previously issued Metrochek, and for complying with the disbursing agent's procedures for return of the partially unused Metrochek or receipt of a corresponding reduction in the next month's subsidy. Failure to comply with these provisions will result in loss of eligibility to receive transit subsidies under this Article, and may subject employees to disciplinary action.

Section G. Grievances

The Employer will designate one individual in each component to serve as the final deciding official on all grievances relating to administration of the Metrochek program that are filed in accordance with Article 27 of this Agreement.

Article 32

Flexiplace

Section A. General Provisions

The Department of Justice makes a variety of worklife options potentially available to its employees. A single form, the Department of Justice Flexible Work Option Request Form, has been instituted to ensure that employees have a formal, consistent mechanism for requesting flexibility. Managers will give full and thoughtful consideration to employee requests.

Section B. Definitions

1. Flexiplace, also known as flexible workplace or telecommuting, refers to paid employment away from the workplace or at home for an agreed upon portion of the workweek. Flexiplace arrangements may be of short or long term duration.

2. Duty time. Although flexiplace may offer some employees more time for their family responsibilities (i.e., through reduced commuting time), in compliance with guidelines from the Office of Personnel Management, flexiplace arrangements can not be used as a substitute for child care or other dependent care. Employees may not use duty time for any purpose other than official duties.

3. Designated work area. A designated work area at an alternate work site is a single area, either a room or a portion of a room, that is set aside for the performance of the employee's official duties. The designated work area must be free from interruptions, and must provide the necessary level of security and protection for Government property.

Section C. Criteria and Conditions for Approval

1. Flexiplace is not an entitlement. The work needs of the organization will be paramount in supervisory decisions to approve, disapprove, or modify individual requests for Flexiplace arrangements. Decisions will be made on a case by case basis, with a focus on the portability of the employee's duties; the impact that the proposed arrangement will have on the efficient operation of the organization; and the employee's work history. See addendum.

2. The initial step in reviewing a Flexiplace request will be an examination of the nature and specific requirements of the employee's work. In order for a request to receive consideration, the supervisor must first determine that the employee's regular duties can be performed as efficiently and effectively at an alternate work site, without disrupting office operations; adding to agency costs; adding to the work of other employees; or hampering the efficiency of others with whom the individual interacts or provides support, either within or outside the office. In this regard, the supervisor will carefully consider how the employee is proposing in his/her Flexiplace request to sustain or enhance the employee's and the organization's ability to get the job done.

3. If the supervisor determines that the duties of an employee's position are suitable for performance at an alternate work site, as discussed above, the supervisor will then assess the employee's work history for the characteristics associated with successful performance of work in the absence of direct supervision. The employee should be an organized, highly disciplined, and conscientious self-starter, who has demonstrated dependability in accomplishing work assignments without close supervision, and good time management skills. Employees must also be willing to report to the office on a scheduled Flexiplace day, if the supervisor so directs it, based on the work needs of the office.

Individuals who are on leave restrictions; who have been counseled or disciplined for leave or conduct problems within the preceding year; or who have received less than a "fully successful" (or equivalent) rating on the employee's most recent performance appraisal, are ineligible to participate in Flexiplace arrangements.

4. Upon request, the Employer will provide interested employees with a listing of GSA-approved telecommuting centers in the vicinity of the employee's home. The Employer will determine if use of a telecommuting center is a cost effective method of performing work by an employee who has met all of the criteria for participation in a Flexiplace program.

5. Employees proposing an alternate work site other than an approved telecommuting center or other government office must certify compliance of the designated work area with all appropriate safety requirements, and must present an acceptable plan for eliminating personal distractions, including specific arrangements for dependent care if applicable. The employee agrees to permit the employer to inspect the alternative work site during the employee's normal working hours to ensure conformance with safety standards and/or provisions of Section E concerning the protection of government records. Necessity of inspection will be determined on a case-by-case basis by management. Employees will normally receive a minimum of 24 hours of advance notice. Additional inspections will occur only for cause, for example, accidents in the designated work area, employee relocation, or potential security violations. The parties understand that, normally, inspections will be done by officials with the appropriate qualifications to certify compliance with safety and/or security requirements.

6. Approved participants must have appropriate equipment to do their job, e.g., a computer with appropriate processing capability and associated communications hardware and software that are

fully compatible with the equipment in use in their office, or any other equipment that is necessary for the performance of their duties. Appropriate surplus/loaner equipment may be provided on a temporary, short term basis in some circumstances dependent upon: (1) the availability of such surplus/loaner equipment; (2) other pending priority requests for such equipment; and (3) a management determination that the temporary assignment of this equipment to an employee for a short term flexiplace arrangement will best meet the work needs of the organization. The employer will not expend funds for telecommunications or any other additional costs that arise from an employee's use of a home as an alternate work site.

7. Normally, employees on Flexiplace arrangements are expected to perform their duties at the alternate work site during regular business hours, and to be accessible during those hours to supervisors, and others as needed. In accordance with applicable law, rules and regulations and Article 17, Section C, overtime must be ordered and approved in advance, in order for the employee to be compensated. Because of the requirements for premium pay, Flexiplace schedules are not available in the Legal Divisions/Office of the Solicitor General between the hours of 6pm and 6am or on Sundays and federal holidays.

Section D. Procedures for Making and Approving Requests

1. Employees wishing to request Flexiplace/telecommuting must fully address all information requirements on the DOJ Flexible Work Option Request Form. This form may be obtained from their supervisor or Executive Office and is incorporated by reference herein.

2. If a request is approved, the employee must sign a Flexiplace agreement in a manner specified by the Employer which sets forth the terms, conditions, and duration of participation.

Management may waive the requirement for a written agreement if the Flexiplace arrangement is of short duration, i.e., limited to a few days for a specific project approved by the supervisor. Notwithstanding such informal arrangements, appropriate measures to ensure the government against liability must be taken.

3. If an employee is engaged in a grievance or appeal relating to his/her work history at the time a Flexiplace request is made, the supervisor's decision on the Flexiplace request will be held in abeyance until the grievance or appeal is resolved.

Section E. Protection of Government Records

Employees under Flexiplace arrangements are responsible for ensuring that all government records used at an alternate work site are safeguarded against unauthorized disclosure or damage, and will comply with all laws, rules, and regulations governing classified, law enforcement sensitive, and Privacy Act protected information.

Section F. Termination of Flexiplace Arrangements

1. Management has the right to end a Flexiplace arrangement at any time prior to the conclusion of an agreement period if the employee's performance declines; if the employee does not conform to the agreed upon arrangements; if the employee's off-site work adversely affects the work of the staff remaining in the office; or if the arrangement fails to meet organizational needs.

2. Whenever feasible, employees will be given two weeks advance notice before managements's termination of a Flexiplace agreement. An employee may terminate his/her participation in such an agreement at any time, after proper notification to the supervisor.

Article 33

Effective Date and Duration

Section A. Effective Date

This Agreement shall take effect on the thirty-first day following successful negotiation and execution by the Parties, unless disapproved by the Attorney General of the United States pursuant to the provisions of 5 U.S.C. § 7114 within thirty (30) days of execution.

Section B. Duration

At the expiration of three (3) years from its effective date, the Agreement will expire unless: 1) either party requests renegotiation of the Agreement as set forth below or 2) the Agreement is renewed as set forth below.

Section C. Renegotiation and Renewal

The Employer or the Union may request to renegotiate the Agreement by submitting notice in writing at least sixty (60) days, but not more than one hundred twenty (120) days, prior to the expiration date. In the event the parties renegotiate the Agreement, the current terms will remain in effect until superseded by a new Agreement. In the event that neither party submits a notice to renegotiate, the Agreement will be renewed for periods of one (1) year upon written request of either party except for provisions which may be in conflict with applicable law, rule or regulation.

Section D. Attorney General Disapproval

If the Attorney General disapproves the negotiated language, pursuant to 5 U.S.C. § 7114(c), the Union is free to petition the Federal

Labor Relations Authority to challenge the decision or to reopen negotiations over the topic. Upon any disapproval the parties may negotiate until full agreement is reached. However, the Parties expressly agree and understand that, absent mutual agreement, no portion of the Agreement will be implemented until final agreement on the entire contract is reached by both parties.

Addendum

During the course of negotiations leading to this collective bargaining Agreement, the parties agreed to the following express bargaining notes:

On March 15, 2001, in discussion on Article 2 (Governing Laws and Regulations), the Parties agree with respect to all Articles of the Agreement:

1. Whenever language in this Agreement refers to specific duties or responsibilities of specific supervisors, employees, management officials, or offices, it is intended only to provide a guide as to how a situation may be handled. It is agreed that the Employer retains the sole discretion to assign work and to determine who will perform the function discussed.

2. Likewise, when language in this Agreement refers to specific hours of work, or to other management rights listed in 5 U.S.C. 7106, it is intended only to provide a guide as to how a situation may be handled. It is agreed that the Employer retains the sole discretion to set these parameters in order to accomplish the mission of the organization.

3. While Management reserves the right to assign specific functions, the contractual obligation to perform those functions continues to apply.

On November 20, 2001, with respect to Article 10 (Career Ladders):

The parties agree that with respect to Section B.2, examples of unusual circumstances may include, but are not limited to, temporary government-wide promotion freezes, or prohibitions associated with reductions-in-force within a Legal Division/Office of Solicitor General.

On March 16, 1993, with respect to Article 10 (Career Ladders):

The parties understand that with regard to Section B.2, Procedures, there is no intent to modify the Employer's existing practices, which include a memorandum from the supervisor recommending a career ladder promotion and the initiation of an SF-52.

On August 24, 1993, with respect to Article 16 (Reductions in Force):

The parties understand that with regard to Section C.2.b, Notification, the inclusion of "the reason for the action" is for informational purposes only. As such, the Union agrees to a clear and unmistakable waiver of any right to grieve this matter under the negotiated grievance procedure.

On March 29, 2001, with respect to Article 25 (Actions Based on Unacceptable Performance):

Open communication between the employee and the supervisor on performance issues is a primary purpose of a Performance Improvement Plan (PIP). The Union recognizes Management rights listed in 5 U.S.C. 7106. Nevertheless, when the Employer believes that the Union's presence at performance counseling sessions will facilitate communication, the manager is encouraged to consider employee requests for union attendance.

On March 8, 2001, with respect to Article 32 (Flexiplace):

With regard to Section C.1, the parties agree that the phrase "decisions will be made on a case by case basis" means that consideration of flexiplace requests requires analysis of the criteria listed in this Article. These criteria do not include blanket exclusions based on occupational series.

Appendix 1

Appendix 2