AGREEMENT BETWEEN THE GENERAL COUNSEL OF THE NLRB AND THE NLRB PROFESSIONAL ASSOCIATION—EFFECTIVE 10/31/02

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PREAMBLE

This Agreement, and any supplemental and side agreements that may be executed while this Agreement is in effect, constitute a collective-bargaining agreement between the General Counsel of the National Labor Relations Board (the "General Counsel"), and the National Labor Relations Board Professional Association (the "Association").

ARTICLE 1

PRINCIPLES, PURPOSES, AND POLICIES

WHEREAS, Congress has found that experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, safeguards the public interest, contributes to the effective conduct of public business, and facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment.

WHEREAS, labor-management relations are strengthened through the participation of employees in the formulation and implementation of personnel policies and practices relating to their conditions of employment and through constructive and cooperative relationships with labor organizations.

WHEREAS, the public interest demands the highest standard of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

THEREFORE, the General Counsel and the Association enter into this Agreement to advance the mission of the National Labor Relations Board and the well-being of its Headquarters staff attorneys and other professional employees.

ARTICLE 2

RECOGNITION

Section 2.1. Recognizing that a majority of attorneys and other professional employees performing comparable legal work in the Headquarters Office of the General Counsel have selected the Association as their exclusive representative and that a certification has been issued to this effect, the General Counsel reaffirms recognition of the Association as the exclusive representative of employees in the following unit:

> All attorneys and other professional employees performing comparable legal work in the Headquarters Office of the General Counsel, excluding (1) any managerial executive, (2) any employee engaged in Federal personnel work in other than a purely clerical capacity, and (3) supervisors as defined by applicable law.

Section 2.2. All permanent part-time employees, and all law student employees (Student Assistants) other than those holding summer appointments only and those on work-study programs, shall be part of the unit described in Section 2.1.

ARTICLE 3

PRECEDENCE OF LAW

Section 3.1 In the administration of all matters covered by this Agreement, officials and employees are governed by existing or future laws and regulations of appropriate authorities, by published Agency policies and regulations in existence at the time this Agreement is approved, unless modified by mutual agreement by a particular provision in the Agreement explicitly addressing the matter covered by such rules and regulations, and by subsequently published Agency policies and regulations required by law or by the regulations of appropriate authorities.

Section 3.2. Any provision contrary to existing law or Executive Order shall not invalidate any other provision of this Agreement.

Section 3.3. The parties and this Agreement are subject to the requirements of 5 U.S.C. Chapter 71 and other applicable laws.

Section 3.4. During the term of the Agreement, either party is free to request mid-term bargaining concerning any matter not explicitly addressed in the Agreement. Upon such request, both parties agree to bargain concerning any matter not explicitly addressed in the Agreement to the extent they would be required to bargain over such matter in the absence of a collective-bargaining agreement.

Section 3.5. It is the intent of the parties hereto that there is no conflict between the terms of this Agreement and the NLRB Administrative Policies and Procedures Manual or other Agency policies, procedures, rules, or regulations affecting conditions of employment, including local office policies and procedures. If such conflict is found to exist, this collective-bargaining agreement shall take precedence, to the extent permitted by law.

ARTICLE 4

MANAGEMENT RIGHTS AND OBLIGATIONS

Section 4.1.

(a) Nothing in this agreement shall affect the authority of any management official of the Agency--

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and

(2) in accordance with applicable laws--

(A) to hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the Agency operations shall be conducted;

(C) with respect to filling positions, to make selections for appointments from--

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the Agency mission during emergencies.

(b) The parties agree that nothing in this Section is intended to waive either party's bargaining rights and obligations under applicable law.

(c) Nothing in this Agreement shall preclude the General Counsel and the Association from negotiating--

(1) at the election of the General Counsel, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the Agency will observe in exercising any authority under this Article; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this Section by such management officials.

Section 4.2. In the event budgetary or staffing considerations prevent the implementation or continuation of any benefit of this Agreement which is expressly contingent on such considerations, the General

Counsel will not be obligated to continue the benefit after notice is given to the Association that budgetary or staffing considerations prevent such continuation. The General Counsel agrees to notify the Association concerning the decision to limit or discontinue the contractual benefit and, to the extent permitted by law, will bargain over the decision and effects of such decision. In the event the Association seeks to bargain pursuant to this Section, such bargaining will toll the time for filing a grievance under Article 10.

Section 4.3. In exercising their rights and in implementing the terms and conditions of this Agreement, management officials shall not act in an arbitrary or capricious manner.

ARTICLE 5

TRANSIT PASS PROGRAM

Pursuant to Executive Order 13150, entitled "Federal Workforce Transportation," and the Agency's September 19, 2000 Administrative Policy Circular 00-06, entitled "NLRB Transit Pass Program," the Agency shall continue and maintain its current transit pass program, including future increases, for all unit employees in the Agency's Washington, D.C. offices. Under this program, qualified unit employees in Headquarters shall receive "transit passes" on a quarterly basis in an amount equal to their actual certified commuting costs not to exceed the maximum allowed by law. Participants shall recertify their commuting costs whenever changes in commuting costs are experienced or whenever otherwise required by the administrators of the program.

ARTICLE 6

EMPLOYEE RIGHTS AND RESPONSIBILITIES

Section 6.1. Each employee shall have the right to form, join, or assist any labor organization, or to engage in other concerted activities for the purpose of mutual aid or protection, 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 5 U.S.C. Chapter 71, this shall include the right--

(a) to act for a labor organization in the capacity of representative and the right, in that capacity, to present views of the labor organization 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 employees under 5 U.S.C. Chapter 71. Managerial and supervisory employees excluded from the bargaining unit under Article 2 cannot hold office in or act for the Association in the capacity of a representative.

Section 6.2. The Agency shall not take or fail to take any personnel action with respect to any employee as a reprisal for a disclosure of information by an employee, which the employee reasonably believes, evidences--

(a) a violation of any law, rule, or regulation, or

(b) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to the public health or safety, if such disclosure is not specifically prohibited by law or regulation and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Section 6.3. The Agency will not discriminate with regard to any term or condition of employment of any employee or employees because of lawful political affiliation or belief, marital status, race, color, national origin, religion, non-disqualifying disability, age, sex, sexual orientation, or any other non-job-related criterion.

Section 6.4.

(a) Employees shall have the right to representation by the Association at any examination by a representative of the Agency in connection with an investigation if--

(1) the employee reasonably believes that the examination may result in disciplinary action against him or her; and

(2) the employee requests such representation.

(b) The Agency shall in January of each year inform each employee of his or her rights under Section 6.4(a).

(c) Each employee shall be entitled to a consultation period, up to thirty (30) minutes, with an Association representative before any examination described in Section 6.4(a) may take place.

(d) Each employee may designate a particular Association representative to represent him or her for the purposes of this Section, provided that the designation does not unreasonably delay the examination.

Section 6.5. No action shall be taken against an employee for violating a rule or regulation that the employee could not reasonably have known to exist.

Section 6.6. Employees will be treated with respect, dignity, and fairness.

Section 6.7. Consistent with Agency notices published in the Federal Register, branches and offices may maintain copies of employment and performance records for current and former Board employees of that office or branch. The Agency shall notify employees within five (5) business days of the placement into any branch or office file of any document, comment, or writing except for:

(a) copies of records required to be in the official personnel file, educational transcripts, resumes, and initial employment interview reports; and

(b) copies of recommendations concerning promotions, annual and interim performance appraisals, career development appraisals, and evaluation reports, if copies have been provided to the employee prior to their placement in the file.

An employee shall be entitled, upon request, to have any materials other than appraisals and evaluations, or materials required by law, Governmentwide regulation, their own terms, or mutual agreement or understanding, to be retained, be removed from his or her files after 1 year.

Section 6.8. An employee shall have the right to inspect the contents of his or her Official Personnel Folder and Employee Performance File maintained by the Human Resources Branch, and the personnel file maintained by the division, office, or branch in which the employee is

employed by contacting the appropriate system manager, consistent with 29 CFR § 102.117(g) and (h).

Section 6.9. During the life of this Agreement, employees covered by this Agreement will not engage in a strike, work stoppage, or slowdown.

ARTICLE 7

NOTICES TO EMPLOYEES

Section 7.1. The Agency shall insert the Association's welcome package, a copy of this Agreement, any side agreements, and any changes, modifications, additions, or deletions thereto, into the orientation package provided to new unit employees. The Agency shall provide the Association with sufficient copies of Form 1187 (dues deduction request form) for inclusion in the Association's welcome package. The Association will provide the Agency with a sufficient supply of Association welcome packages, which will include an orientation receipt form specifying the name and room number of the current Association President. The Agency shall return the orientation receipt form to the current Association President identified on the receipt form, confirming that it has given each new unit employee a copy of a complete orientation package and the Association's welcome package, within ten (10) business days of having done so. The Association will provide additional welcome packages to the Agency when the Association determines the Agency's supply is insufficient based upon the number of orientation receipts received.

Section 7.2. The Agency shall notify employees in January of each year with respect to:

(a) emergency evacuation plans, all emergency plans, and names, phone numbers, and office locations of emergency coordinators and the Agency contact numbers; and

(b) their right to inspect all of their personnel files and the locations of all such files.

Section 7.3. The Agency shall provide all affected unit employees with copies of any side agreements and copies of any changes, modifications, additions, or deletions to this Agreement, within five (5) business days. To the extent electronic transmission is possible, such changes, modifications, additions, or deletions will be provided electronically.

Section 7.4.

(a) The parties recognize that the Employee Assistance Program (EAP) in-house staff members are a part of Agency management in the Human Resources Branch. It is also recognized that as administrators of the EAP, the in-house staff is often privy to information of a highly personal nature that is disclosed to them by employees seeking assistance. Both the in-house EAP staff and contracted EAP providers

are required to keep confidential any and all information that is disclosed to them by employees who seek their assistance, unless the employee waives such confidentiality. Both the in-house EAP staff and contracted EAP providers may release information only with a signed authorization from the employee that identifies the individual(s) to whom the information may be released. All employees have the option of utilizing a contracted EAP provider outside the Agency if they choose to do so.

(b) The Agency shall provide a copy of the language of Section 7.4(a) to each employee seeking assistance from the EAP office.

(c) If an employee contacts the EAP office, no one in that office will advise anyone in the Agency of that contact. If a supervisor refers an employee, the EAP staff will advise the supervisor whether the employee has kept the appointment.

ARTICLE 8

ASSOCIATION RIGHTS AND OBLIGATIONS

Section 8.1. The Association shall have all rights provided for in 5 U.S.C. Chapter 71, as amended (and as it may be further amended during the term of this Agreement), and shall be entitled to act for and to negotiate agreements covering all employees in the unit. The Association shall be responsible for representing all employees in the unit without discrimination and without regard to membership in a labor organization.

Section 8.2. The Association shall have the right and be given the opportunity to be represented at any formal discussion between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment.

Section 8.3. The Agency will not in any way restrain, interfere with, coerce, or discriminate against any Association representative with respect to the responsible exercise of his or her right to serve as a representative for the purposes of collective bargaining, handling of grievances and appeals, or acting in accordance with applicable regulations and agreements on behalf of an employee or group of employees in the unit.

Section 8.4. In addition to any meetings concerning complaints, grievances, or other disagreements, there shall be regularly scheduled quarterly consultations between representatives of the Association and responsible officials designated by the Agency. The purpose of such consultations shall be to discuss matters raised by either party. Association representatives shall be on official time during such consultations. The schedule for the Quarterly Consultations is as follows: the 3d week of October, January, April, and July, unless otherwise agreed.

Section 8.5. Consistent with Article 21 (Official Time for Representational Functions), the parties recognize that an employee serving as an Association representative is responsible for performing his or her duties as an employee as well as his or her duties as an Association representative.

Section 8.6. The Association, and its officers or agents will not--

(a) call or participate in a strike, work stoppage or slowdown, picket the Agency in a labor-management dispute if such picketing interferes with the Agency's operations; or

(b) condone any such activity set forth in Section 8.6(a) by failing to take action to prevent or stop it, provided that nothing in this Section shall preclude informational picketing which does not interfere with the Agency's operations.

Section 8.7. The Association will not represent individuals to whom the provisions of the National Labor Relations Act apply or affiliate directly or indirectly with an organization that represents individuals to whom the provisions of the National Labor Relations Act apply.

ARTICLE 9

EQUAL EMPLOYMENT OPPORTUNITY

Section 9.1. The Agency and the Association fully support the ideal of equal employment opportunity.

Section 9.2.

(a) An EEO Advisory Committee will be established, composed of two representatives of the Agency and two representatives of the Association. This committee shall meet on a semi-annual basis.

(b) The EEO Advisory Committee will review progress under the Agency's EEO Action Plan and report on a semiannual basis to the Board, the General Counsel, and the Association.

Section 9.3.

(a) Fifteen (15) business days prior to the planned publication of the Affirmative Employment Program Plan and the Annual EEO Accomplishment Report, the Agency shall provide copies to the Association and provide the Association with an opportunity to comment on the draft documents.

(b) In each fiscal year covered by this Agreement, the Agency shall provide to the EEO Advisory Committee members and the Association, at the same time they are provided to Agency managers, copies of the Affirmative Employment Program Plan and the Annual EEO Accomplishment Report.

ARTICLE 10

GRIEVANCE PROCEDURE/ ALTERNATIVE DISPUTE RESOLUTION

Section 10.1. Definition of a Grievance. A grievance is defined as any complaint:

(a) by any employee represented by the Association concerning any matter relating to the employment of the employee;

(b) by the Association concerning any matter relating to the employment of any employee represented by the Association; or

(c) by any employee represented by the Association, or by the Association, concerning--

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

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

Section 10.2. Grievances Filed by Individual Employees. Any employee or group of employees represented by the Association who present a grievance under this Article shall be limited to Association representation or self-representation unless the law specifically provides for the right to other representation. If an employee presents a grievance without Association representation, the Association shall be given the opportunity to be present at the adjustment and at any formal discussions leading up to the adjustment, including those undertaken pursuant to Section 10.10, and any grievance adjustment will not be inconsistent with the terms of this Agreement. An employee or group of employees grieving without the intervention of the Association must follow the negotiated grievance procedure. In addition, if an employee is presenting a grievance, it must be identified clearly as a grievance, and the Association will be given notice of the grievance at the time it is presented to management.

Section 10.3. Election of Remedies.

(a) Except as provided below, the grievance procedure set forth in this Article shall be the exclusive procedure for resolving grievances.

(b) Any aggrieved employee affected by a prohibited personnel practice under 5 U.S.C. § 2302(b)(1) (anti-discrimination provision) that also falls under the coverage of this grievance procedure may raise the matter under a statutory procedure or this procedure, but not both. An employee shall be deemed to have exercised that option when the employee timely initiates an action under the applicable statutory

procedure or timely files a grievance in writing under the procedure set forth in this Article, whichever occurs first.

(c) Selection of the negotiated grievance procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board ("MSPB") to review the final decision pursuant to 5 U.S.C. § 7702 (appeals to the Merit Systems Protection Board) in the case of any personnel action that could have been appealed to the MSPB, or, where applicable, to request the Equal Employment Opportunity Commission ("EEOC") to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the EEOC.

(d) Matters covered under 5 U.S.C. § 4303 and § 7512 (Adverse Actions) that are also covered under this procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of 5 U.S.C. § 7701 (Merit Systems Protection Board appellate procedures) or under the procedure set forth in this Article, but not both. An employee shall be deemed to have exercised that option at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing under the grievance procedure set forth in this Article, whichever occurs first.

(e) Except for matters as to which, under 5 U.S.C. § 7121(e) and (f), an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under this grievance procedure may, in the discretion of the aggrieved party, be raised under this grievance procedure or as an unfair labor practice under 5 U.S.C. § 7116, but not under both procedures. An aggrieved party shall be deemed to have exercised this option upon the filing of a timely charge or written grievance.

Section 10.4. The Grievance Process. Any grievant may refer a grievance to the Association. The grievant, the Association, or both may attempt to adjust the grievance informally, first with the first-line supervisor and thereafter with any other management official if the parties mutually agree. This informal resolution may employ any methods upon which the parties mutually agree, so long as those methods are consistent with applicable law, Governmentwide rule and regulation, and this Agreement. Except as mutually agreed upon pursuant to Section 10.7 (Mutually Agreed Extensions), Section 10.10 (Alternative Dispute Resolution), or as expressly stated elsewhere in this Agreement, nothing in this Agreement shall be construed as tolling the time limits within which a grievance must be initially presented or subsequently pursued through the following steps:

The submission of formal grievances, grievance responses, and requests for extensions of time may be by hard copy, electronic transmission, or both.

STEP ONE—The grievant or the Association shall present the grievance to the Branch Chief, in writing, within ten (10) business days following the date on which the aggrieved party or an Association representative (officer or steward) had knowledge of the facts giving rise to the grievance, provided that if the grievance concerns an annual appraisal, filing of the grievance may be deferred until 10 days after the denial of a personnel action or the taking of any adverse action that is based on that appraisal. Upon written notice, an additional fifteen (15) business days will be granted, provided that a written notice is served upon the Branch Chief within the initial ten (10) business day period. The grievance shall be answered in writing within ten (10) business days following the date on which the grievance was presented.

STEP TWO—Absent resolution of the grievance at Step One, the grievant or the Association, within ten (10) business days of the answer at Step One, may present the grievance in writing to the Division Head. The grievance shall be discussed and considered at a meeting or meetings of the parties at a mutually agreeable date and time within ten (10) business days after the written grievance has been presented to the Division Head. The grievance shall be answered in writing within ten (10) business days after the presentation of the grievance, or after the final meeting concerning the grievance, whichever is later.

STEP THREE—Absent resolution of the grievance at Step Two, the grievant or the Association, within ten (10) business days of the answer in Step Two, may present the grievance in writing to the General Counsel. The Association may request a meeting with the General Counsel, or his or her designee, to discuss the grievance, and such meeting will be conducted at the sole discretion of the General Counsel, or his or her designee. The grievance will be answered in writing within twenty (20) business days after the presentation of the grievance, or after the final meeting, whichever is later.

Section 10.5. Initial Filing at a Higher Step. If any grievance arises concerning a matter that the management representative(s) do not have authority to correct, the grievance may be initiated at the appropriate step of the grievance procedure that would allow the grievance to be considered by the person who has the initial authority to take the requested corrective action. If a grievance is initiated at Step Two or Step Three, the time limits for filing the initial written grievance, and for seeking in writing an automatic fifteen (15) business day extension, shall be the same as those set forth in Step One.

Section 10.6. Effect of Failure to File or Answer. Failure by management to answer a grievance within the time limits specified in any of the foregoing steps shall be deemed a negative answer. Any grievance not presented or appealed within the time limits specified in this Article shall be deemed settled on the basis of the last answer issued.

Section 10.7. Mutually-Agreed Extensions. Time limits for presenting, appealing, and deciding grievances may be extended by mutual written agreement at any step. Requests for extensions of time may be by hard copy, electronic transmission, or both.

Section 10.8. Duty to Provide Relevant Records. Subject to applicable law and Governmentwide regulation, management will, upon written request, make available, subject to Section 102.118 of the Agency's Rules and Regulations, to the grievant and/or his or her representative any record relied upon to sustain the action which gave rise to the grievance and any other information relevant and necessary to the processing of the grievance.

Section 10.9. Exclusions from the Grievance Procedure. Matters expressly excluded from the procedures set forth herein include, in addition to other matters expressly mentioned elsewhere in this Agreement:

(a) the failure by management to recommend or grant a quality step increase or incentive award, except that such matters are grievable to the extent permitted by the Agreement on Awards dated September 23, 1992;

(b) the decision to hire rather than transfer; and

(c) the decision to terminate a probationary employee.

Section 10.10. Alternative Dispute Resolution ("ADR").

(a) Alternative Dispute Resolution ("ADR") is an informal process whereby the aggrieved party and the Agency voluntarily agree to try to resolve disputes that are contractually grievable or that are otherwise specifically referable to ADR by some other provision of this agreement. The objective of the ADR program is to use trained no-cost mediators drawn from the Shared Neutrals Program, the Federal Mediation and Conciliation Service (FMCS), or other supplemental resources to assist parties in resolving disputes within short timeframes and to avoid costly and unnecessary litigation. Resolutions resulting from mediations are binding and no agreement reached through the mediation process will conflict with any law or regulation, or violate any provision of the collective-bargaining agreement between the Agency and the Association unless the Association expressly waives its contractual rights.

(b) An ADR administrator will be designated by management and located in NLRB Headquarters. The ADR administrator is responsible for administrative matters relating to this ADR provision including: notifying the parties when ADR is elected; arranging for mediators from the FMCS, Shared Neutrals Program, or other supplemental resources; acting as liaison between the parties and the mediator; and collecting and maintaining data necessary for ongoing evaluation of the program.

(c) The Association, or any unit employee who has a dispute that would normally be processed through the grievance procedure or ADR as specified in this contract, may request that the dispute be referred to ADR. Election to participate in ADR is voluntary and the Association or employee may withdraw from the ADR process at any time. An employee may bring a representative to mediation. The Association or employee should inform the ADR administrator if any special accommodations are needed during mediation.

(d) The management officials involved in mediation normally are identified by the aggrieved employee's initial identification of the parties to the dispute. Although management may designate its representatives in mediation, it recognizes that the mediation process normally works best when the involved management official(s) is (are) the lowest level of management with the authority to resolve the dispute. Management should inform the ADR administrator if any special accommodations are needed during the mediation.

(e) While participation in the ADR process is voluntary (except as expressly provided by some other provision in this Agreement requiring mandatory ADR), the General Counsel and the Association are strongly committed to the use of ADR, whenever appropriate. Accordingly, whenever the parties agree to submit a dispute to resolution through ADR, it is anticipated that their chosen representatives will support this commitment by participation in the mediation process.

(f) All mediation sessions are confidential. This means that the mediator cannot be called as a witness during litigation or in any formal proceeding. All parties are to maintain the confidentiality of ADR, and cooperate in good faith with the terms set forth at the beginning of mediation. Because mediation is a confidential process, any information submitted to the mediator during the mediation is only for settlement purposes. The parties will jointly request that the mediator destroy any notes taken during the mediation session(s).

(g) ADR Procedures.

(1) (A) A person who believes that he or she has a nongrievable dispute that is appropriate for resolution under these ADR provisions should contact his or her Association representative within five (5)

business days following the date on which the individual, Association representative, or management official had knowledge of the facts giving rise to the dispute.

(B) A person who has a grievable dispute that he or she would like to attempt to resolve under these ADR provisions should contact his or her Association representative as soon as possible once he or she decides to pursue ADR. In cases where no formal grievance has been filed, the grievant or the Association, in order to preserve rights to file a grievance under this Article of the contract, must request an extension of time for the purpose of using the ADR process. Such requests must be filed in writing within the ten (10) business day period set forth in Section 10.4, Step One, or any extended filing period, and an extension until ten (10) business days after the conclusion of the ADR process will be routinely granted. In cases where a formal grievance has already been filed, the grievance procedure will automatically be tolled by the initiation of the ADR procedures.

2. The ADR procedures are initiated when an individual, the Association, or management requests mediation by filing a Request to Mediate form with the ADR administrator. Within three (3) business days of the receipt of the Request to Mediate form, the ADR administrator shall notify all appropriate parties. The Association shall be notified of filings in every instance in which it was not the filing party. The Request to Mediate form is provided in the Appendix.

3. (A) Where ADR is mandatory under the terms of this contract, the ADR administrator will, within three (3) business days of the receipt of the Request to Mediate form, contact the Shared Neutrals Program, the FMCS, or some other agreed-upon source, to secure a mediator.

(B) Where ADR is not mandatory under the terms of this contract, the ADR administrator will notify the interested parties of the Request to Mediate and, within three (3) business days of the receipt of the Request to Mediate form, determine whether there is agreement to mediate the dispute. Where the parties agree to participate, the ADR administrator will, within three (3) business days of obtaining such agreement, contact the Shared Neutrals Program, the FMCS, or some other agreed-upon source, to secure a mediator.

(C) The ADR administrator will make any necessary logistical arrangements and accommodations.

4. At the commencement of the mediation, the parties will sign and date the confidentiality section of the Request to Mediate form.

5. Should the employee, the Association, or management decide to terminate mediation, the mediator will explain to the parties the consequences of such action and should identify the remaining options, e.g., withdrawing the dispute from ADR and processing it through the grievance/arbitration procedure, if applicable. If a party terminates mediation, the parties will sign and date the termination section of the Request to Mediate form.

6. If mediation is successful, the parties will sign and date the settlement section of the Request to Mediate form, and the settlement agreement will be prepared and attached.

7. Mediation shall be completed as soon as possible, but no later than thirty (30) calendar days from the date the mediator is assigned the case, absent agreement of the parties to an extension.

8. At the conclusion of mediation, the ADR administrator will provide the parties and the mediator with an evaluation form to be completed and returned to the ADR administrator for the purpose of gathering data to monitor the effectiveness of the program.

ARTICLE 11

ARBITRATION

Section 11.1. In the event a grievance is not resolved at the final step of the grievance procedures as set forth in Article 10, the Association may refer the grievance to arbitration by giving written notice to the other party within thirty (30) calendar days of the receipt of the decision at the final step. Any grievance as to which arbitration is not requested within this time limit will be deemed settled on the basis of the last answer issued.

Section 11.2. Limitations.

(a) The arbitrator's award is subject to the provisions of existing laws, executive orders, regulations, and policies.

(b) The arbitrator shall not have any power to add to or subtract from, to disregard, or modify any terms of this or any agreements made by the undersigned parties.

(c) Arbitration proceedings will not extend to proposed changes in agreements, provided, however, that nothing herein shall preclude the parties in the event of impasse from seeking binding arbitration from the Federal Service Impasses Panel.

Section 11.3. Upon the request of either party, the arbitrator shall decide questions of grievability or arbitrability, after hearing relevant facts and arguments on such questions, prior to the opening of a hearing on the substantive allegations of the grievance. It is understood that this does not preclude subsequent submittal of an issue of grievability or arbitrability to the Federal Labor Relations Authority (FLRA) and the appropriate court of appeals, or the filing of exceptions to an arbitrator's award.

Section 11.4. Within five (5) calendar days after referral to arbitration, the parties may, by mutual agreement, consolidate the grievance with any other grievance already referred to arbitration, but not yet heard. Upon request of either party, intra-unit grievances presenting common issues of fact shall be consolidated.

Section 11.5. Upon referral to arbitration, either party may request the Federal Mediation and Conciliation Service (FMCS) to submit a list of five (5) arbitrators having Federal sector experience and who are either members of the National Academy of Arbitrators or who have equivalent experience and qualifications. The parties shall confer within thirteen (13) business days following the receipt of such list. If the parties cannot mutually agree upon one of the arbitrators, they shall

alternately cross off one at a time with the party invoking the arbitration provision being the first to strike a name until one arbitrator remains, who shall be the arbitrator selected by the parties.

Section 11.6. The arbitration hearing shall be held during regular working hours.

Section 11.7. The arbitrator will be requested by the parties to render his or her opinion as quickly as possible but no later than thirty (30) calendar days after the hearing unless the parties otherwise agree.

Section 11.8. Either party to the arbitration may file exceptions to the arbitrator's award with the Federal Labor Relations Authority pursuant to 5 U.S.C. § 7122. If no exceptions are filed within thirty (30) calendar days of the issuance of the award, the award shall be final and binding.

Section 11.9. Fees and expenses of the arbitrator shall be shared equally by the Agency and the Association. The cost of a shorthand reporter or reporters and costs for office or hearing facilities, other than those for cost-free facilities, shall be shared equally.

Section 11.10. To streamline arbitration, the parties may mutually agree to request the FMCS to submit a list of three arbitrators having the qualifications set forth in Section 11.5. The parties will request that the arbitrator issue a brief written decision (generally not more than two pages) within five (5) business days after the hearing.

ARTICLE 12

ADVERSE ACTIONS AND ACTIONS BASED UPON UNACCEPTABLE PERFORMANCE

Section 12.1. In the event that an adverse action is taken against a preference eligible employee (a veteran) who has completed 1 year of continuous service in the same or similar positions or a nonpreference eligible who has completed 2 years of continuous service in the same or similar positions (other than a temporary appointment limited to 2 years or less), he or she may elect, upon receiving a written decision of adverse action, to file a grievance or to file an appeal with the Merit Systems Protection Board (MSPB), but not both.

Section 12.2. Types of Actions Covered.

(a) The following actions may be taken based upon unacceptable performance:

(1) removal;

(2) reduction in grade.

(b) The following actions, which are generally based upon conduct or a combination of performance and conduct, may be taken for such cause as will promote the efficiency of the service:

(1) a removal;

(2) a reduction in grade;

(3) a reduction in pay;

(4) a suspension for more than 14 days.

(c) A suspension for 14 days or less may be taken for just cause.

(d) A furlough for 30 days or less which is based upon lack of work or funds or other nondisciplinary reasons which does not result from the application of reduction in force procedures.

Section 12.3. Actions Not Covered: the procedures set forth below in this Article shall not apply when different or additional procedural steps are mandated by applicable law or regulation.

Section 12.4. Actions Based Upon Unacceptable Performance:

(a) The following actions may be taken based upon unacceptable performance:

(1) removal;

(2) reduction in grade.

(b) At such time as an employee, who has completed his or her administrative trial period, after having received remedial counseling for a reasonable time as set forth in Section 14.9(a) (Performance Appraisal), is performing at an unacceptable level in one or more critical elements, he or she will be notified in writing of:

(1) the unacceptable performance;

(2) the action which must be taken to improve the performance to a minimally successful level; and

(3) the assistance that management will provide in an attempt to help the employee achieve that level.

The employee will be given a 90-calendar day period in which to bring his or her performance up to a minimally successful level. At the end of this period, a written appraisal of the employee's performance will be issued. If the performance has not improved to a minimally successful level, the employee will be given a 45-day advance written notice of proposed action as described in Section 12.4(c) below.

(c) Notice of Proposed Action. An employee whose reduction in grade or removal is proposed by the Branch Chief based upon unacceptable performance is entitled to--

(1) A 45-day advance written notice of the proposed action which specifies the nature of the proposed action and which includes the following:

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

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

(C) the employee's right to answer the notice in writing, orally, or in both manners, within a reasonable time, but not less than 14 days, and the official at a level above the proposing official to whom answers are to be directed;

(D) the employee's right to review and make photocopies of the materials, subject to Section 102.118 of the Agency's Rules and Regulations, relied upon by the Agency to support its proposal[1] and the location of such materials, to prepare or submit an answer, to secure affidavits or other documentary evidence in support of an answer and the employee's right to a reasonable amount of official time to do so, in accordance with Section 21.5

[1] The Agency may not use materials which cannot be disclosed to the employee or his or her representative or designated physician to support the reasons in the notice.

(Official Time For Representational Functions), if he or she is otherwise in an active duty status; and

(E) the employee's right to be represented by the Association, an attorney, or other representative.

(2) A written decision which, unless proposed by the General Counsel, has been concurred in by an official who is in a higher position than the official who proposed the action and which specifies:

(A) what, if any, action shall be taken;

(B) the date the action is to be effectuated;

(C) the instances of unacceptable performance by the employee on which the reduction in grade or removal action is based;

(D) the Agency's response to each issue which was raised by the employee's answer that it deems relevant;

(E) the specific appeal procedures available and the manner and time limits in which the employee may utilize the procedures.

The employee shall be given a release form (see Appendix) by which the employee may authorize management to provide to the Association a copy of the notice of proposed action described in Subsection 12.4(c)(1) above, and the decision described in Subsection 12.4(c)(2) above. Upon the employee's authorization, management shall provide such copies to the Association within one (1) business day.

(d) The decision to retain, reduce in grade, or remove an employee--

(1) Shall be made within 30 days after the date of the expiration of the notice period but no later than the time such action will become effective. The decision shall be based upon the entire unacceptable performance record, which shall include any material the employee submits in his or her defense.

(2) In the case of a reduction in grade or removal, may be based only on those instances of unacceptable performance by the employee:

(A) which occurred during the 1-year period ending on the date of the notice described in Section 12.4(c)(1) in connection with the decision; and

(B) for which the notice and other requirements of this Section are complied with.

(e) Records.

(1) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and any order effecting an action covered by this Article, together with any supporting material, shall be maintained by the General Counsel and shall be furnished to the MSPB upon its request and to the employee affected upon the employee's request.

(2) *Expungement From Files.* If, because of a decision that such action was not warranted, the employee is not reduced in grade or removed, the advance written notice described in Section 12.4(c)(1) and all responses shall be removed from any Agency record relating to the employee. If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice described in Section 12.4(c)(1) above, any entry or other notation of the unacceptable performance for which the action was proposed under this Section shall be removed from any Agency record relating to the employee. Under all other circumstances, the employee shall be entitled to have such materials removed 4 years after the closing of the case.

Section 12.5. Adverse Actions (Except for Suspensions of 14 days or Less); and Actions Brought Under Section 12.2(c).

(a) The Agency may take an adverse action covered by this Section including actions brought under Section 12.2(c), against an employee only for such cause as will promote the efficiency of the service.

(b) Except as provided in Section 12.5(c), an employee against whom an action is proposed under this Section is entitled, to--

(1) A 30-day advance written notice of the proposed action, unless there is a reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, which specifies the nature of the proposed action and which includes the following:

(A) the action which is proposed and the specific reasons for the proposed action;

(B) the employee's right to answer the notice in writing, orally, or in both manners, within a reasonable time, but not less than 14 days, and the official at a level above the proposing official to whom answers are to be directed;

(C) the employee's right to review and make photocopies of the materials, subject to Section 102.118 of the Agency's Rules and Regulations, relied upon by the Agency to support its proposal, and the locations of such materials, to prepare or submit an answer and to secure affidavits or other documentary evidence in support of an answer and the employee's right to a reasonable amount of official time to do so in accordance with Section 21.5 (Official Time For Representational Functions) if he or she is otherwise in active duty status;[2]

(D) the employee's right to be represented by the Association, an attorney, or other representative.

(2) A written decision which, unless proposed by the General Counsel, has been concurred in by the official who is in a higher position than the official who proposed the action. This decision shall be given to the employee at the earliest practicable date but no later than the time such action will become effective. The decision shall be based upon the entire adverse action record which shall include any material the employee submits in his or her defense and shall specify:

(A) what, if any, action shall be taken;

(B) the effective date of the action;

(C) which of the reasons contained in the notice of proposed adverse action have been sustained, and which, if any, have not been sustained by the evidence;

(D) the Agency's response to each issue which was raised by the employee's answer that it deems relevant;

(E) the specific appeal procedures available and the manner and time limits in which the employee may utilize the procedures.

The employee shall be given a release form (see Appendix) by which the employee may authorize management to provide to the Association a copy of the notice of proposed action described in Subsection 12.5(b)(1) above, and the decision described in Subsection 12.5(b)(2) above. Upon the employee's authorization, management shall provide such copies to the Association within one (1) business day.

(c) Exceptions.

(1) An exception to the 30-day advance written notice is authorized when the crime provision of Section 12.5(b)(1) is invoked.

[2] The Agency may not use materials which cannot be disclosed to the employee or his or her representative or designated physician to support the reasons in the notice.

In such instances, the employee is entitled to furnish an answer to the proposed adverse action together with affidavits and other documentary evidence in support of the answer. However, the Agency may require that such answer and supporting documents be submitted within a reasonable period of time under the circumstances, but not less than 7 days. When the circumstances require immediate action, the Agency may place the employee in a nonduty status with pay for such time, not to exceed 10 days, as is necessary to effect the action.

The employee shall be given a release form (see Appendix) by which the employee may authorize management to provide to the notice of proposed action to the Association. Upon the employee's authorization, management shall provide such notice to the Association within one (1) business day.

(2) The advance written notice and opportunity to answer are not necessary for furlough without pay for 30 days or less due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities: however, the employee(s) will be provided an explanation of the reasons for such furlough.

(d) Employee Duty Status. In regard to removal actions, when the Agency determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in the loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the Agency may in these rare circumstances elect one or a combination of the following alternatives: (1) assign the employee to duties where he or she is no longer a threat to safety, the Agency mission, or to Government property; (2) allow the employee to take leave, or carry him or her in an appropriate leave status (annual, sick, leave without pay, or absence without leave), if the employee has absented himself or herself from the worksite without requesting leave; (3) curtail the notice period when the Agency can invoke the "crime provisions" of 5 CFR § 752.404(d)(1); or (4) place the employee in a paid, nonduty status for such time as is necessary to effect the action.

(e) Records.

(1) Copies of the notice of proposed action, the answer of the employee when written, a summary of the answer when made orally, the notice of decision and any order effecting an action covered by this Article, together with any supporting material, shall be maintained by the General Counsel and shall be furnished to the

MSPB upon its request and to the employee affected upon his or her request.

(2) Expungement From Files. If, because of a decision that the adverse action was not warranted, no further action is taken, the advance written notice described in Section 12.5(b)(1) above, and all responses shall be removed from any Agency record relating to the employee. Under all other circumstances, the employee shall be entitled to have such materials removed 4 years after the closing of the case.

Section 12.6. Appeals and Grievances of Adverse Actions (Except for Suspensions of 14 Days or Less).

All employees covered by this Article may grieve an adverse action in accordance with Section 12.6(a) below. An employee covered by this Article who is a preference eligible in the excepted service, or a non-preference eligible who has completed 2 years of continuous service in the same or similar positions (other than a temporary appointment limited to 2 years or less), may elect to appeal or grieve an adverse action in accordance with Section 12.6(a) or 12.6(b) below, but not both.

(a) After the written decision has been issued, the employee may elect to file a grievance. The grievance must be filed in accordance with the time requirements set forth in Section 10.4 (Grievance Procedure), and processed in the manner described in that Section, except that it should be filed directly at Step 2 of the grievance procedure. Upon completion of the grievance procedure, the Association may refer the grievance to arbitration in accordance with Article 11 (Arbitration).

(b) After a written decision has been issued, any employee eligible under the law to do so may elect to appeal to the MSPB within the time limits and in the manner prescribed by the MSPB. Appeals to the MSPB guarantee the right to a hearing pursuant to 5 U.S.C. § 7701.

Section 12.7. Suspensions for 14 Days or Less.

(a) An employee may be suspended for 14 days or less only for just cause.

(b) An employee against whom a suspension for 14 days or less is proposed is entitled to a 10-day advance written notice which will include the following:

(1) the proposed action and the specific reasons for it;

(2) a right to answer in writing, orally, or in both manners, within a reasonable time, but not less than 5 days, and the official at a higher level than the proposing official to whom the answer is to be directed;

(3) a right to review and make photocopies of the materials, subject to Section 102.118 of the Agency's Rules and Regulations, relied upon by the Agency to support its proposal[3] and the location of such materials, to prepare or submit an answer, to secure affidavits or other documentary evidence in support of an answer and the employee's right to a reasonable amount of official time to do so in accordance with Section 21.5 (Official Time For Representational Functions), if he or she is otherwise in an active duty status;

(4) the employee's right to be represented by the Association, an attorney, or other representative.

(c) A written decision which, unless proposed by the General Counsel, has been concurred in by an official who is in a higher position than the official who proposed the action. The decision shall be given to the employee at the earliest practicable date but no later than the time such action will become effective. The decision shall be based on the entire suspension record, which shall include any material the employee submits in his or her defense and shall specify:

(1) what, if any, action shall be taken;

(2) the date the action is to be effectuated;

(3) which of the reasons contained in the notice of proposed adverse action have been sustained, and which, if any, have not been sustained by the evidence;

(4) the Agency's response to each issue raised by the employee's answer that it deems relevant;

(5) the specific appeal procedures available and the manner and time limits in which the employee may utilize the procedures.

The employee shall be given a release form (see Appendix) by which the employee may authorize management to provide to the Association a copy of the notice of proposed action described in Subsection 12.7(b) above, and the decision described in Subsection 12.7(c) above. Upon the employee's authorization, management shall provide such copies to the Association within one (1) business day.

(d) Upon the issuance of the written decision, the employee may file a grievance in the manner described in Article 10 (Grievance Procedure/Alternative Dispute Resolution).

(e) Records.

[3] The Agency may not use materials which cannot be disclosed to the employee or his or her representative or designated physician to support the reasons in the notice.

(1) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and any order effecting an action covered by this Article, together with any supporting material, shall be maintained by the General Counsel and shall be furnished to the MSPB upon its request and to the employee affected upon the employee's request.

(2) Expungement From Files. If, because of a decision that the adverse action was not warranted, no further action is taken, the advance written notice described in Section 12.7(b)(1) above, and all responses shall be removed from any Agency record relating to the employee. Under all other circumstances, the employee shall be entitled to have such materials removed 4 years after the closing of the case.

Section 12.8. If a supervisor or manager conducts a meeting with an employee, during which the principal topic of discussion is an adverse action or potential adverse action, the employee involved may request the presence of an Association representative. If such a request is made after the meeting has begun, the supervisor or management official will temporarily stop the meeting for a reasonable period of time to allow the Association representative to come to the meeting. The employee may request a particular Association representative for purposes of this Section, provided that such request does not unreasonably delay the meeting.

Section 12.9. The Agency has participated and will continue to participate in programs such as the Federal Employee Assistance Program in the counseling of employees who have alcohol, drug, or mental health problems. Before taking an adverse action or imposing a suspension of 14 days or less against an employee for a performance or conduct problem related to alcohol, drug abuse, or mental health problems, the Agency shall consider whether to provide that employee with the opportunity to participate in the Federal Employee Assistance Program or a similar program selected by the employee.

Section 12.10. For the purpose of preparing an oral and/or written answer to a notice of proposed action and to furnish affidavits and other documentary evidence in support of the answer:

(a) the employee will have reasonable access to typing and copying facilities; and

(b) upon prior request and approval by his or her supervisor, an employee being interviewed in connection with an adverse action will be granted reasonable official time consistent with operating needs, and if otherwise in an active duty status.

Section 12.11. If subsequent to the employee's answer the Agency should conduct a supplemental investigation, the employee will have the right to review and to make photocopies of, subject to Section 102.118 of the Agency's Rules and Regulations, additional materials considered by the Agency, and an opportunity for comment.

Section 12.12. Expedited Arbitration for Removals.

(a) Within 10 days after the receipt by the employee of the Agency's decision, or receipt by the Association of the Agency's denial of the final step of the grievance procedure, the Association may refer the matter to expedited arbitration as set forth in this Section.

(b) At the time the Association notifies management of its referral of a matter to expedited arbitration, management will, forthwith, on behalf of the parties, request the Federal Mediation and Conciliation Service (FMCS) to submit, on an expedited basis, a list of 10 arbitrators having Federal sector experience and who are members of the National Academy of Arbitrators. Management will pick up the list from the FMCS in order to avoid any delay from mailing.

Upon receipt of such list of arbitrators, management will send a communication from the parties by the fastest means possible to each arbitrator inquiring as to availability and willingness to hear the case within 27 to 32 days from the date of the Association's referral to arbitration and issue a written decision within 25 days following the hearing. Such communication will request each arbitrator to respond within 48 hours.

The first five arbitrators, in the order on the FMCS list, who respond that they are so available and willing, will constitute the register from which the selection will be made in accordance with Subparagraph (c) below. In the event fewer than five of the arbitrators are available and the parties do not mutually agree upon an arbitrator from the list, the Agency will, on behalf of the parties, request another list of ten arbitrators from the FMCS in accordance with the same expedited procedures set forth above.

(c) Within 3 business days from the date a register of five arbitrators has been established, representatives of the parties will consult in an attempt mutually to agree upon an arbitrator from that list. If the parties cannot mutually agree upon one of the arbitrators within that 3-day period, on the 4th day they shall alternately cross off one name at a time until one arbitrator remains, who shall be the arbitrator selected by the parties. This striking process shall be completed on that 4th day. The party invoking the arbitration provision shall be the first to strike a name.

ARTICLE 13

CALCULATION OF SERVICE

Section 13.1. Service, whenever referred to in this Agreement, shall be calculated on the basis of continuous employment as an attorney (or other professional) with the Agency, unit, branch or office, as applicable, except that continuous part-time employment shall be credited on a pro rata basis. An employee shall not receive credit for prior service except where the employee terminates his or her employment or is terminated and--

(a) within ninety (90) calendar days of termination receives a commitment to return to work and returns to work within one hundred twenty (120) calendar days, provided that these time limits are tolled by any appeal procedures; or

(b) in the case of a paid law student employee covered by this Agreement where the employee begins his or her Agency employment within twelve (12) months of graduation or the date upon which the commitment was made, whichever is later.

Section 13.2. This Article shall not apply to the calculation of "creditable Federal service" or the "service computation date" for purposes of the application of reduction in force procedures.

ARTICLE 14

PERFORMANCE APPRAISAL SYSTEM

Section 14.1. Introduction. The performance appraisal system shall be administered fairly, reasonably, uniformly, and in good faith; shall provide employees with regular feedback to keep them advised of what is expected of their performance and of how well they meet those expectations; and shall provide information on an employee's current performance and assistance in improving that performance.

Section 14.2. Definitions.

(a) Performance is an employee's accomplishment of assigned duties and responsibilities as set forth in the critical elements of the employee's position.

(b) Appraisal is the act or process of reviewing an employee's performance against the performance standards.

(c) Critical Element is a component of an employee's job consisting of one or more duties and responsibilities which contributes towards accomplishing organizational goals and objectives and which is of such importance that "unacceptable" performance on the element would result in "unacceptable performance of assigned work."

(d) Performance Standard is a statement of the expectations or requirements established by management for a critical element at a particular rating level.

(e) Rating means the written record of the appraisal of each critical element and overall performance.

(f) A Summary Rating is an overall performance rating obtained by a composite consideration of the levels of performance of the critical elements.

Section 14.3. Employee Participation.

Employees are encouraged to contribute their ideas through the Association regarding the substance/content of critical elements and performance standards and the operation of the performance appraisal system.

Section 14.4. Critical Elements and Performance Standards.

(a) The substance and content of critical elements and performance standards is within management's discretion and not subject to the grievance procedure.

(b) Elements and standards will be in writing and related to the employee's assigned work.

(c) The performance standards will be on a five tier basis; i.e., outstanding, commendable, fully successful, minimally successful, and unacceptable.

(d) Should management wish to change any existing standards or elements the following procedure will be used:

(1) Management will develop and forward to the Association the proposed standards and elements for each position or group of positions.

(2) The Association will have 15 business days in which to comment in writing on the proposed standards and elements.

(3) After receipt of the Association's written comments, management will meet, upon request, with the Association regarding the substance/contents of the standards and elements and any related matters.

Section 14.5. Communication.

(a) Management will give each employee a copy of his or her critical elements and performance standards when hired or promoted and as changes occur. Management will discuss/explain the elements and standards to the employee when hired and as changes occur.

(b) The employee's signature on the elements and standards will be requested and will signify receipt of the documents and that the discussion referred to in Section 14.5(a) took place.

Section 14.6. Frequency of Appraisals.

All attorneys will receive annual appraisals on March 31. The appraisal period will be for a 12-month period beginning on February 16 and ending on February 15. Employees working under an administrative trial period will normally receive their initial performance appraisals on their anniversary dates of employment with the Agency. In no event will an employee be appraised if he or she has not worked under critical elements and performance standards for at least 90 calendar days.

Section 14.7. Appraisal Process.

(a) Performance appraisals must be based on elements and performance standards. A summary rating will also be given. An employee's performance appraisal must allow for factors or changes which affect performance and are beyond an employee's control and for authorized absences, including but not limited to union representation. Accordingly, in assessing an employee's productivity, the appraising official shall take into account the amount of approved official time and leave used by the employee during the appraisal period.

(b) Employees are to be appraised in comparison with their own elements and standards; pre-established distribution patterns will not be employed. At a minimum, written comments must accompany every rating of Minimally Successful or Unacceptable and, upon request, employees shall have the right to clarification of any written comments.

(c) (1) Prior to preparing an appraisal, the appraising official shall advise the employee being appraised that he or she may submit a statement of work handled during the appraisal period. Upon request, the appraising official will discuss with the employee the work handled during the appraisal period, provided that this discussion does not involve communication of anticipated performance ratings to the employee.

(2) Each annual rating will be reviewed and approved by at least one management official above the appraising official before a copy is given to the employee.

(3) When a copy of the appraisal is given to the employee, the appraising official shall discuss it with the employee and respond to any questions the employee may have. Employees shall sign the appraisal and be permitted to add comments to the record if they object to any part of appraisal. The signature indicates that the discussion(s) took place and that the employee received a copy of the appraisal. It does not constitute agreement with the rating.

(4) The employee shall have the right to ask for reconsideration of a performance rating by the appraising official or manager who approved the performance rating.

(d) In the Appellate Court Branch, upon the completion of a major assignment, the supervisor will discuss the assignment with the attorney and set goals for the next assignments. If an attorney has not received such oral feedback, he or she may request a meeting with the supervisor to discuss the assignment. If an attorney's work falls below the fully successful level, the supervisor will inform the attorney of any deficiencies in writing. At the mid-point of the appraisal year, Appellate Court attorneys will receive a written progress review[4] which contains references to specific case assignments. In the Advice Branches, employees will receive an evaluation by the immediate supervisor on each main brief within 20 days after the brief has been filed.

(e) Any employee who is detailed outside his or her branch or staff for more than 60 days shall receive an interim evaluation at the end of the detail by the supervisor to whom assigned. When an employee is

[4] During the first year of this Agreement only, the mid-term progress review will include a discussion of each critical element and a summary rating on each critical element.

transferred from one supervisor to another within his or her branch or staff during an appraisal period, and provided that the first supervisor has supervised the employee for at least 60 days, the first supervisor will, no later than 30 days after the change in supervision, prepare a written interim evaluation, a copy of which will be provided to the employee. In either case, the annual appraisal shall reflect the contents of all interim evaluations to the extent relevant to the employee's critical elements. Upon the employee's request, any interim evaluations not attached to the appraisal shall be attached to and become part of the employee's annual appraisal.

(f) A standardized appraisal form will be used for all annual appraisals which will be prepared in triplicate. The original will be placed in the official appraisal record file, one copy will be given to the employee, and the other copy will be placed in the files maintained by the branch to which the employee is assigned. The Employee Performance File will be maintained in the Human Resources Branch. The Employee Performance File and the branch files referred to above will be maintained in conformity with the Privacy Act and Office of Personnel Management (OPM) regulations.

(g) Whenever management determines that there is an adequate basis for assessing the supervisory capabilities of GS-13 and GS-14 employees, such a narrative assessment shall be included in their annual rating. In the event that management determines there is an insufficient basis for making such an assessment, the rating form shall so indicate.

(h) Upon the employee's request, any interim evaluations, progress reviews or case evaluations not attached to the appraisal shall be attached to and become part of the employee's annual appraisal. Such provisional evaluations shall be grieved as part of a grievance regarding the annual appraisal itself, which is the only rating of record.

Section 14.8. Progress Review.

(a) A progress review shall be held for each employee in the 6th month of the appraisal period. At a minimum, employees shall be informed in writing whether their performance is at least fully successful. A copy of the review shall be provided to the employee. The performance rating given the employee at the end of the appraisal period may not necessarily coincide with the assessment given the employee during the progress review.

(b) In order to ensure that employees receive timely progress reviews, the Agency will notify both the appropriate appraising official and the employee shortly before the midpoint of the appraisal period that a progress review is owed the employee by a certain date.

(c) Any employee who does not receive the progress review required by this Section may file a grievance within the normal 10-business day limit specified in Section 10.4 (Grievance Procedure), provided that if a grievance concerning the annual appraisal is otherwise timely under the special rules set forth in Section 10.4, the employee may also grieve the failure to receive a timely progress review.

(d) The Office of Appeals will satisfy the obligations of parts (a) and (b) of this Section if it continues its existing practice of scheduling interim appraisals for all employees and provides the employee with a copy of each interim appraisal.

Section 14.9. Use of the Appraisal.

(a) Remedial Counseling.

(1) If, at any time during the appraisal year, the appraising official concludes that an employee's work is minimally successful as to any critical element, the official shall meet with the employee to:

(A) inform the employee of the perceived deficiencies in the applicable critical element or elements, including a discussion of the applicable performance standards within the element or elements;

(B) inform the employee of the consequences of a minimally successful rating in any critical element in terms of career ladder promotions and/or within-grade increases;

(C) recommend specific ways for the employee to correct the perceived deficiencies.

(2) Thereafter, within a reasonable amount of time after this meeting, the appraising official will inform the employee of his or her progress. Continued counseling may be required. In the event the employee is ultimately rated minimally successful in any critical element and is denied a career ladder promotion or a within-grade increase, the employee will be reappraised between 4 and 6 months thereafter, the exact date to be set by the appraising official and communicated to the employee as part of the appraisal. There may be no more than one reappraisal per year.

(3) Failure to comply with any of the provisions in Section 14.9 will not preclude management from rating an employee minimally successful on one or more critical element(s).

(4) If during an appraisal year the appraising official considers an employee's work to be unacceptable as to any critical element, the official shall identify the deficiencies and conduct remedial counseling for a reasonable period of time prior to issuance of the 90-

day notice specified in Section 12.4 (Actions Based Upon Unacceptable Performance). However, an employee who is currently undergoing remedial counseling, as required by this Section, concerning that same critical element or who has received such counseling during the previous year may immediately be issued a 90-day notice. Furthermore, if an employee has already received a 90-day improvement period within the prior year, the employee may immediately be issued the 45-day notice specified in Section 12.4 (Actions Based Upon Unacceptable Performance) if, within that 1-year period, the employee's performance has again become unacceptable in the same critical element(s) for which the employee was previously afforded the 90-day opportunity to demonstrate acceptable performance.

(b) Developmental Counseling/Training.

(1) Performance results and the employee's progress during an appraisal period can assist in identifying an employee's strengths and weaknesses. The derived information may then be used to identify what type of training is needed to improve the employee's performance and/or to prepare the employee for future positions within the Agency.

(2) It is the policy of the General Counsel to minimize situations where employees are denied promotions to unit positions for lack of experience. In keeping with the workload and time responsibilities of the office, management will make every reasonable effort to provide every employee who has demonstrated the requisite competence with an adequate opportunity for development and progress through assignment of a variety of case work, including cases of a more complex and challenging nature, essential to his or her development, and to acquire the experience required for promotions to unit positions within the branch or office to which the employee is assigned. The assignment of individual cases is within the discretion of management.

Section 14.10. System Improvement.

The parties agree that this Article may be reopened in its entirety one time during the life of this Agreement. The reopener may occur on the 1-year anniversary date of this Agreement or at any 6-month interval thereafter.

ARTICLE 15

AWARDS

Section 15.1. Awards.

Until such time as a new awards system is created, the Agreement on Awards dated September 23, 1992, and the Memorandum of Understanding dated October 26, 1992, as well as the language set forth in this Article, shall be the documents that govern the issue of awards.

Section 15.2. Where seniority is a factor in making awards in Appellate Court/Contempt Litigation & Compliance/Special Litigation/Supreme Court, management agrees that seniority shall be computed by reference to the combined Appellate Court/Contempt Litigation & Compliance/Special Litigation/Supreme Court seniority list. All opportunities for awards shall be available on a nondiscriminatory basis to all nonsupervisory attorneys in the four branches. Work in the branches shall be regarded as of equal importance for the purpose of awards, provided that particular accomplishments may be considered in making decisions on awards.

Section 15.3. System Improvement.

The parties agree that this Article may be reopened in its entirety one time during the life of this Agreement. The reopener may occur on the 1-year anniversary date of this Agreement or at any 6-month interval thereafter.

ARTICLE 16

PROMOTIONS

Section 16.1. GS-14 Career Ladder.

(a) The position of GS-14 senior attorney shall be the full performance level in the career ladder for Headquarters attorneys.

(b) Linkage for Promotion. In order for an attorney to be promoted to GS-14, the employee must receive, in their most current performance appraisal, a rating of Fully Successful or higher in all critical elements.

(c) The time-in-grade requirement for promotion from GS-13 to GS-14, absent accelerated promotion (16.1(d) & (e)), is 36 months.

(d) Attorneys rated Outstanding in their first full year as a GS-13 will receive an accelerated promotion to a GS-14 on their anniversary date.

(e) Attorneys rated Commendable in their second full year as a GS-13 will receive an accelerated promotion to a GS-14 on their anniversary date.

Section 16.2. Career ladder promotions will become effective at the beginning of the first pay period after the employee has met the requirements necessary to qualify for the promotions. Quality step increases or incentive awards will be made effective at the beginning of the first pay period after the approval or grant of the award. Consistent with Governmentwide rules and regulations, regular within-grade increases will be made effective at the beginning of the first pay period after the required waiting period and upon certification by management that the employee is performing at an acceptable level of competence. Where required, a completed Standard Form 52, "Request for Personnel Action," will be submitted to the Human Resources Branch no later than 15 days prior to the proposed effective date of the action. If, as a result of noncompliance with any of the requirements of this Section or as a result of administrative or clerical error, the promotion or step increase of an employee is delayed, or an incentive award previously approved or granted is not promptly received, the employee will, where permitted by applicable law, be paid retroactively for such period of delay.

Section 16.3. Promotions to Supervisory Positions.

(a) Unless management elects to fill the position from among its current managers or supervisors, the following areas of consideration and procedures will be used in considering applicants for promotion to vacant GS-15 supervisory positions if and when management decides to fill any vacant position at this level.

First Area: All unit employees rated Fully Successful or better.

Second Area: All Agency employees rated Fully Successful or better.

Third Area: Eligible candidates from any appropriate source.

(b) Vacancies will be advertised through posting. Management will fully consider each successive area of consideration before moving on to the next area of consideration.

(c) All applicants in the first and second areas of consideration must submit, in addition to the application requirements of the posting, a statement describing his/her vision of the qualities they would bring to the job of supervisor and a recommendation from a current or former supervisor discussing the applicant's work habits and qualities that indicate supervisory potential.

(d) The requirements of this Section shall not apply to second-line or higher supervisory positions.

(e) Management will provide the Association with contemporaneous notice when resort is made to the second area of consideration and when resort is made beyond the second area of consideration.

ARTICLE 17

POSITION CLASSIFICATIONS

Section 17.1. All Association bargaining unit member positions will be classified in accordance with the requirements of applicable law and regulation.

Section 17.2. The Agency will notify the Association of any proposed change of standard unit job descriptions or position classifications, provide supporting information, and bargain with respect to the proposed change as required by law, or as mutually agreed by the parties.

ARTICLE 18

PARTICIPATION IN RELATED LITIGATION AND REPRESENTATION CASE DRAFTING

Section 18.1. Office of Appeals and Division of Advice.

With respect to the attorneys in the Office of Appeals and the Division of Advice interested in obtaining litigation opportunities, management agrees to consider requests by these attorneys to participate in the actual litigation of cases in the field on which they have worked. Decisions respecting such work assignments are not subject to the grievance and arbitration procedures of this Agreement.

Section 18.2. Appellate Court/Special Litigation/Supreme Court Branches.

With respect to the continued ability of attorneys in Appellate Court/Special Litigation/Supreme Court to broaden their litigation skills, management agrees to consider requests by these attorneys, whose knowledge of a case may be of use in expeditiously processing a related contempt case, to participate in a support role in the contempt phase of cases on which they have worked. Decisions respecting such work assignments are not subject to the grievance and arbitration procedures of this Agreement.

Section 18.3. Injunction Litigation Branch and Appellate Court Branch.

With respect to the attorneys in the Injunction Litigation Branch interested in obtaining additional appellate argument opportunities, management agrees to consider requests by these attorneys, whose knowledge of a case may be of use in expeditiously processing a related Section 10(e) injunction case to participate on cases in which they have worked. Decisions respecting such work assignments are not subject to the grievance and arbitration procedures of this Agreement.

Section 18.4. Supreme Court Work.

(a) If it becomes necessary to assign work to an attorney outside the Supreme Court Branch, management agrees to use the procedures set forth under Article 35, Flexible Work Assignments.

(b) Nothing in this Article precludes management from assigning Supreme Court work in accordance with past practice, which includes asking the attorney(s) who handled a case in the lower court(s) to handle the following Supreme Court work in that case:

(i) memoranda to the Board on whether to seek certiorari;

(ii) petitions for certiorari, responses to opposing parties' petitions for certiorari, or briefs on the merits.

(c) In accordance with past practice, nothing herein shall preclude management from assigning to the Supreme Court Branch unit attorney overflow assignments from the Appellate Court and Special Litigation Branches.

(d) Assignments made by management under this Article are not intended to reorganize the Supreme Court Branch. Reorganizations are governed by the procedures set forth in Section 38.4 (Duration and Effect of the Agreement).

Section 18.5. Representation Case Drafting.

It is the policy of the Agency to afford staff attorneys in the Office of Representation Appeals with the opportunity to draft decisions where review has been granted pursuant to screens circulated by those attorneys. Whenever, in the judgment of Director of the Office of Representation Appeals, the case handling needs of the office require that a draft on review be assigned outside of the office, the attorney who prepared the screen will be consulted concerning which draft he or she considers the most appropriate one for reassignment outside the Office of Representation Appeals.

ARTICLE 19

SUPERVISORY ASSIGNMENT PROCEDURES

Section 19.1. Procedures in Office of Appeals.

(a) The scheduling of any major change in the assignment of attorneys to primary supervisors will be at the sole discretion of management. It is management's policy that the appraising supervisor for each attorney will be rotated on an annual basis at the end of the evaluation year.

(b) Management shall notify the Association at least three (3) weeks in advance of the implementation of any major change in the assignment of attorneys to primary supervisors.

(c) Any attorney may submit, through the Association, within seven (7) business days after such notification, a written memorandum indicating one or more primary supervisors (up to the full complement of primary supervisors) to whom he or she would prefer to be assigned when the change is implemented, and the attorney may indicate the order of his or her preference for assignment to any named supervisor.

(d) Management will consider all assignment preferences so submitted, provided that nothing herein shall prevent management from exercising its discretion in making individual attorney assignments.

(e) Nothing in this Agreement shall foreclose an attorney from submitting or management from considering an attorney's reassignment preferences when reassignment of that attorney has been necessitated by the departure of any primary supervisor from, or the appointment of any new primary supervisor to, the Branch, nor foreclose individual attorneys from seeking, or management from considering, individual reassignment in any other circumstances.

(f) The Office of Appeals will continue its existing practice of written interim appraisals for all employees and will provide the employee with a copy of the interim appraisal.

Section 19.2. Procedures in Appellate Court Branch.

(a) The scheduling of any major change in the assignment of attorneys to primary supervisors will be at the sole discretion of management. Management contemplates that major changes will take place on a regular basis and at intervals of roughly twelve (12) to eighteen (18) months.

(b) Management shall notify the Association at least three (3) weeks in advance of the implementation of any major change in the assignment of attorneys to primary supervisors.

(c) Any attorney may submit, through the Association, within seven (7) business days after such notification, a written memorandum indicating one or more primary supervisors (up to the full complement of primary supervisors) to whom he or she would prefer to be assigned when the change is implemented, and the attorney may indicate the order of his or her preference for assignment to any named supervisor.

(d) Management will consider all assignment preferences so submitted, provided that nothing herein shall prevent management from exercising its discretion in making individual attorney assignments.

(e) Nothing in this Agreement shall foreclose an attorney from submitting or management from considering an attorney's reassignment preferences when reassignment of that attorney has been necessitated by the departure of any primary supervisor from, or the appointment of any new primary supervisor to, the Branch, nor foreclose individual attorneys from seeking, or management from considering, individual reassignment in any other circumstances.

Section 19.3. Procedures in the Special Litigation Branch.

(a) The scheduling of any major change in the assignment of attorneys to appraising supervisors will be at the sole discretion of management. It is management's policy that the appraising supervisor for each attorney will be rotated each year on March 31, or as soon as practicable thereafter. Upon any change in appraising supervisor assignment, management will immediately advise, in writing, the attorney and the appraising supervisor of the change.

(b) Branch attorneys may submit, and management may consider, requests for reassignment preferences, when reassignment of that attorney is necessitated by an unusual event, including, but not limited to, departure of any appraising supervisor from, or the appointment of any new appraising supervisor to, the Branch, or the increase or decrease in the nonsupervisory staff, or an unusual volume or type of case intake.

(c) It is management's policy that each Branch staff attorney will be supervised by his or her appraising supervisor on a number of his or her more significant matters during the evaluation period. Recognizing that cases initially perceived as major assignments at times become minor case assignments; that cases which start as minor assignments occasionally become major cases; and that the case assignment supervisor cannot maintain a constantly accurate picture of the balance of significant case assignments in the Branch, a Branch attorney may request a correction of any perceived imbalance occurring over time.

Section 19.4. Procedures on the Board-side.

Nothing in this Article shall be construed to impose mandatory supervisory rotation where they do not already contractually exist. However, in those instances where an individual staff attorney may desire a change of supervisory assignment, he/she may submit a request for such a change to his/her Deputy Chief Counsel or the Director of Representation Appeals, as applicable.

ARTICLE 20

COMPENSATORY TIME

Section 20.1. For those unit employees who prefer, or are required by their supervisors to follow, a formal procedure by which the Agency compensates an employee for Agency work necessarily performed during nonwork hours, the General Counsel agrees to the following procedure.

Section 20.2.

(a) Upon request supervisors will authorize compensatory time for work performed outside normal working hours when, in the judgment of the supervisor, such work is required for the timely completion of Agency work. It is agreed that whenever possible, approval of such compensatory time will be granted by the supervisor prior to the time that the work is performed, but this shall not preclude retroactive authorization of compensatory time after work performed outside normal working hours has been completed. Supervisors shall grant such retroactive requests only upon a showing that prior approval of compensatory time was not possible and that the work was necessarily performed outside of regular working hours.

(b) An employee is ordinarily precluded from accruing compensatory leave credits in excess of 60 hours. In addition, at the close of the last full pay period in each quarter, an employee ordinarily may not carry forward to the next quarter more than 40 hours of compensatory leave credits, except that any compensatory leave credit earned during the last full pay period in any quarter shall be exempt from this limitation. The foregoing limitations may be exceeded only if it is established to the satisfaction of a Division Head (or manager of equivalent rank) that the failure to adhere to these limits was due to an exigency of the service beyond the employee's control.

(c) Compensatory leave credits shall ordinarily be used before applying annual leave balances to a particular period of leave. Employees are entitled to a reasonable opportunity to take compensatory leave time, consistent with the operating needs of the office, and such leave shall not be denied without just cause.

Section 20.3. Employees shall also be allowed to work in excess of the 40-hour workweek, and earn compensatory time when that time is required for a legitimate religious reason. An employee who intends to take time off for such reason shall give his or her supervisor at least two (2) business days notice.

Section 20.4. Employees who wish to accrue credit hours may change to a flexitime schedule in accordance with Article 33 (Hours of Work).

Section 20.5. Nothing in this Section shall be deemed a waiver of an employee's right to receive compensation (compensatory time) for hours worked in excess of the forty (40)-hour workweek as provided for in 5 U.S.C. § 5542(a). Employees shall not be required to work overtime hours which are officially ordered or approved pursuant to this Article without being granted compensatory time.

ARTICLE 21

OFFICIAL TIME FOR REPRESENTATIONAL FUNCTIONS

Section 21.1. Definitions. Official time means all time granted an employee by the Agency under the following Sections to perform representational functions when the employee would otherwise be in a duty status, without charge to leave or loss of pay. The amount of official time used by a representative will be taken into account in the assignment of that representative's work.

Section 21.2.

(a) Association representatives will be granted official time to attend consultations and meetings with management officials. Upon prior application to his or her immediate supervisor, the Association representative shall be granted reasonable amounts of official time to prepare for such consultations to the extent not inconsistent with operating needs.

(b) Association representatives shall be granted official time to engage in collective-bargaining negotiations in accordance with 5 U.S.C. § 7131(a).

Section 21.3. Reasonable amounts of official time, at a time consistent with operating needs, shall be granted to Association representative(s), grievants, and witnesses, for the purpose of investigating and processing employee complaints, grievances, or arbitrations. This grant shall include the right of one General Counsel-side Association officer (who may be the Board-side grievance chair whenever it would be inappropriate for the General Counsel-side grievance chair to act) to handle such responsibilities with respect to a General Counsel-side grievance whenever, in the Association's sole judgment, the matter involves a question of cross-unit interests.

Section 21.4. An employee who is issued a notice of proposed adverse action, and his or her Association (or other designated employee) representative, shall be entitled to a reasonable amount of official time, if otherwise in a duty status, to review the notice and materials relied upon to support the reasons set forth therein, to secure affidavits or other documentary evidence in support of an answer and to participate in any meetings with management.

Section 21.5.

(a) Before utilizing official time, an employee will, to the maximum extent possible, notify his or her supervisor. Upon such notification,

requests for official time shall be approved in accordance with Sections 21.2, 21.3 and 21.4 of this Article, Section 8.5 (Association Rights and Obligations), or Sections 12.4(c)(1)(D), 12.5(b)(1)(C), and 12.7(b)(3) (Adverse Actions).

(b) For the purpose of recordkeeping as required by the Office of Personnel Management, employees who use official time for representational activities during a month will submit a written and signed statement to their supervisor by the close of business of the last working day of the month verifying the total number of hours used for such activities during the period. Management will provide the forms for such reporting (see Appendix).

Section 21.6. The Association shall be entitled to up to 54 hours of official time for both units in each year of this Agreement to be used in providing in-house training for Association representatives with respect to the administration of this Agreement and the rights and responsibilities of a labor organization under the Civil Service Reform Act. The Association shall be responsible for dividing this time so that in each year of the Agreement no more than 3 employees may use up to, but no more than, 8 hours of official time; and no more than 18 employees may use up to, but no more than, 3 hours of official time.

Section 21.7. Except as provided above, official time may not be used.

ARTICLE 22

LEAVE

Section 22.1. Employees are entitled to a reasonable opportunity to take leave consistent with the operating needs of the office. Requests for use of annual leave, compensatory leave, sick leave, and leave without pay shall not be denied without just cause. Such leave must be taken in quarter-hour increments.

Section 22.2. Requests for and approval of leave under this Article shall be consistent with the provisions of the Family and Medical Leave Act, 5 CFR § 630.1201, et. seq.

Section 22.3. Reasonable requests for parental leave of up to six (6) months will be granted. Parental leave may be taken by any parent, regardless of gender, and includes leave taken to fulfill responsibilities associated with the birth or adoption of a child, regardless of the age of the adopted child, and the placement of a foster child, regardless of age of the foster child. Such leave may be taken, at the employee's discretion, and in any combination, as sick leave, annual leave, or leave without pay, consistent with Office of Personnel Management and Agency regulations and other applicable provisions of law. The special needs of the employee and his or her family, particularly those special needs associated with maternity and childbirth, and the needs of the employing unit will be considered in any request for an extension of leave beyond the 6-month period. A request for up to six (6) months of additional parental leave as a result of pregnancy-related disability or illness will ordinarily be deemed reasonable if accompanied by a physician's certificate specifying the medical necessity for the absence and its estimated duration.

Section 22.4. Reasonable requests for dependent care leave of up to six (6) months to care for a family member[5] who has a serious health condition will be granted. Any employee, regardless of gender, may take dependent care leave. Such leave may be taken, at the employee's discretion, and in any combination, as sick leave, annual leave, or leave without pay, consistent with Office of Personnel Management and Agency regulations and other applicable provisions of law. The special needs of the employee and his or her family and the needs of the employing unit will be considered in any request for an extension of leave beyond the 6-month period.

[5] "Family member" is defined as (a) spouse, and parents thereof; (b) children, including adopted children, and spouses thereof; (c) parents; (d) brothers and sisters, and spouses thereof; and (e) any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Section 22.5. The total grant of parental leave pursuant to Section 22.3 and dependent care leave pursuant to Section 22.4 will not exceed one (1) year, except that the Division Head shall have discretion to grant additional leave in the most extraordinary of circumstances.

Section 22.6. Reasonable requests for sick leave of up to five (5) workdays for bereavement purposes will be granted to make arrangements necessitated by the death of a family member or attend the funeral of a family member consistent with Office of Personnel Management and Agency regulations and other applicable provisions of law. An additional eight (8) days of sick leave may be granted for these purposes if the employee maintains a sick leave balance of at least eighty (80) hours. Employees may also request to use annual leave or leave without pay for bereavement purposes.

Section 22.7. Subject to staffing considerations, a law clerk trainee scheduled to take a bar examination in any state or the District of Columbia will be granted, upon request, up to forty-five (45) days of annual leave or leave without pay (or any combination thereof) to study for the examination. Each law clerk trainee shall be entitled (subject to staffing considerations) to only one such leave of absence. At the Agency's discretion, an additional period of up to thirty (30) days of annual leave or leave without pay will be granted in the event a law clerk trainee must prepare for a second bar examination in order to meet the requirements of the Agency to practice as an attorney.

Section 22.8. One day of administrative leave shall be granted to an employee attending his or her initial swearing in as a member of the bar of one of the fifty United States or the District of Columbia. If significant travel is necessary to attend the swearing in ceremony, up to two (2) additional days of administrative leave may be granted for travel time.

Section 22.9. Consistent with applicable provisions of law and regulations, an employee's seniority shall continue to accrue for all purposes while on approved leave.

ARTICLE 23

VOLUNTARY LEAVE BANK PROGRAM

Section 23.1. Within sixty (60) days of the execution of this Agreement, the Agency shall convene a committee to study the feasibility of implementing a voluntary leave bank program as authorized under 5 U.S.C. § 6361-6373, the Federal Employees Leave Sharing Amendment Act of 1993, and related implementing regulations in 5 CFR § 630, Subpart J. The Association will be entitled to representation on this committee.

Section 23.2. Within ninety (90) days thereafter, the committee shall submit a report to the General Counsel and the Board setting forth its recommendations with respect to implementation of this program. If the committee reaches consensus on a recommendation, the Agency will implement the program as recommended. If there is no consensus recommending the establishment of a voluntary leave bank program, the Association shall be entitled to reopen this subject immediately and to bargain as required by law with the General Counsel and the Board.

ARTICLE 24

PART-TIME CAREER EMPLOYMENT

Section 24.1. Consistent with 5 U.S.C. § 7106, 5 CFR Part 340, and Section 4.1 of this Agreement, the Agency retains the discretion to determine the number of part-time positions. The Agency will give full consideration to requests by unit members working full-time that they be converted to part-time status and to unit members working part-time that they be converted to full-time status. The Agency will promptly notify the Association of any such request, and at the request of the individual involved, discuss with the individual and the Association all considerations relevant to the requested change in status. No request for conversion shall be denied without affording the Association opportunity for consultation.

Section 24.2. Employees interested in obtaining information regarding part-time employment may contact the Human Resources Specialist assigned to their office. A current listing of designated Human Resources Specialists for each office will be maintained on the Agency Intranet.

Section 24.3. In determining whether to grant a change in status, the Agency will base its decision on such factors as budget, workload, staffing and grade structure, the reasons for the request, and the requesting employee's performance. Special consideration will be given to requests occasioned by family obligations, including maternity and paternity, or health problems. The Agency will normally fill part-time positions through conversion of unit members working full-time who have requested that they be converted to part-time status. However, the Agency may fill part-time positions from outside the unit when:

(a) no qualified unit member has requested conversion to part-time status; or

(b) in the judgment of the hiring official, the individual sought to be hired from outside the unit in a part-time position has such qualifications that hiring that person would add to the personnel resources of the Agency.

Where an employee's request for conversion is rejected, the reasons for rejection will be explained in writing to the employee and the Association, if either party requests a written response.

Section 24.4. Case assignments for part-time employees shall be based on the same standards as for full-time employees, except that the amount of work required of part-time employees will be prorated in

accordance with the number of hours the employee is regularly scheduled to work in each pay period.

ARTICLE 25

FACILITIES AND SERVICES

Section 25.1. Bulletin board space will be made available to the Association for the posting of official notices and other materials necessary to conduct the affairs of the Association.

Section 25.2. Management retains the right to designate those offices that shall be occupied by unit employees. First right of selection for vacant staff offices which management determines are to be occupied by unit employees rests with employees with the greatest Agency service. For the purposes of this Article, permanent part-time employees shall receive full credit for their part-time service. Permanent employees shall receive credit for previous service in part-time student capacities as provided in Article 13 of this Agreement. Once assigned an office, an employee may not be "bumped" from that office by another unit employee unless such "bumping" results from a change in the amount or configuration of office space on a staff. Before making such changes, management will notify the Association and, upon request, meet and confer.

Section 25.3. The Agency agrees to install and maintain in good repair a telephone answering voicemail system with "attendant option" function. When an employee moves to another office within the Agency's Headquarters offices, their originally assigned telephone number shall be transferred to their new office so long as this can be accomplished at little or no cost to the Agency. In the event that management declines to transfer any telephone numbers due to cost increases in the present costs of providing that service, the Association may raise this issue in the quarterly consultations.

Section 25.4. The Agency agrees to provide the Association with an office, computer, printer, telephone, and voicemail with attendant option for its use. The Agency will provide a lockable file cabinet for the Association's use. The Association will agree to relocate its office to comparable space if the Agency needs the existing office space due to a reconfiguration of office space.

Section 25.5. Upon request, the Agency shall provide space, if available, for Association meetings during nonduty hours in accordance with applicable law and regulation.

Section 25.6. The Agency will provide the Association with copies of all Administrative Policy Circulars and Administrative Bulletins that are issued. To the extent that such information is available electronically, an index to the documents shall be posted on the Agency's Intranet with

links to the appropriate underlying document.[6] The list and its links shall be updated with the issuance of each new Bulletin or Circular.

Section 25.7. The Agency shall provide a separate listing of the following in the loose leaf Agency telephone directory and on the Agency Intranet site: the names, office locations, and telephone numbers of Association officers. The Association shall provide the information to be included in such a listing at least once a year.

Section 25.8. In July of each year, the Agency shall furnish to the Association, for its internal use, five (5) copies of a list of unit employees, including the names, grades, steps, entry-on-duty dates, position titles, and division or staff to which they are assigned. To the extent that electronic transmission is possible, this list will be provided electronically.

Section 25.9. The Agency shall furnish to the Association on a bi-weekly or monthly basis one (1) copy of the "Status of Agency Report." To the extent that electronic transmission is possible, this report will be provided electronically. This report shall include the GS ratings for new unit hires and promotions.

Section 25.10. Management will have a sufficient number of copies of the Agreement printed to distribute to each unit member. In addition, the Agency shall provide the Association with fifty (50) additional copies.

[6] A joint committee consisting of one Association representative and one management representative will meet within sixty (60) days of execution of this Agreement to mutually determine which historical Bulletins and Circulars are appropriate to be converted into an electronic format for inclusion on the Intranet index. In the event the two representatives differ on the significance of a particular APC or AB, it is the parties' intention that they should err on the side of inclusion.

ARTICLE 26

HEALTH AND SAFETY

Section 26.1. The Agency will take appropriate action with the General Services Administration, the lessor, and/or building maintenance contractors, as appropriate, in an attempt to assure that they meet their obligations to maintain work spaces, toilets, washrooms, and other areas, including stairwells and elevators, in a safe and sanitary condition, and to maintain lighting, heating, ventilation, and air conditioning at established standards.

Section 26.2.

(a) A Health and Safety Advisory Committee will be established that will consist of two representatives of the Agency and two representatives of the Association. This committee shall meet at least twice a year. Other Agency officials may be invited to attend these meetings depending on the issues being discussed. The creation of this committee will not be construed as a waiver of either party's right to initiate mid-term bargaining over health and safety issues that are not explicitly addressed in this Agreement.

(b) The Health and Safety Advisory Committee shall:

(i) solicit suggestions from disabled employees regarding ways to improve access to building facilities. Based on such suggestions, management will take whatever action it, in its discretion, deems appropriate, which may include recommendations to the General Services Administration, the lessor, and other appropriate authorities;

(ii) solicit suggestions from employees regarding ways to improve the health and safety of employees. The Committee will review the suggestions and if consensus is reached, management shall take whatever action is appropriate, which may include recommendations to the General Services Administration, the lessor, and other appropriate authorities; and

(iii) review the Agency's emergency action plan(s), including existing procedures for evacuating disabled employees, on an annual basis and report any suggested changes to management.

Section 26.3. Fitness Center.

The parties agree that the Agency has a significant and substantial interest in establishing and maintaining its employees' health and

physical fitness. To foster this goal, the Agency will continue to subsidize the cost of the space for the NLRB Fitness Center. The Agency will also pay the costs of maintenance and repair of equipment purchased by the Agency.

Section 26.4. Flexible Spending Accounts.

In light of the current Governmentwide limitations on the types of expenses that may be paid with pre-tax dollars, the parties agree that they will continue to monitor applicable federal law and regulations to determine the Agency's authority to expand this concept. If the Agency is granted the authority to expand the scope of expenses covered by pre-tax dollars, the Agency will convene a work group to explore implementation of flexible spending accounts. The Association will be allowed two representatives on this work group.

ARTICLE 27

TRANSFERS

Section 27.1. The Agency will accept requests for transfer from all qualified employees. Such transfers will comport with sound personnel practices and the requirements of the Agency. All districts and regions of the Agency shall be subject to the provisions of this Article.

Section 27.2. The Executive Assistant to the General Counsel will maintain a register for unit employees who have requested transfers to other offices under the General Counsel's jurisdiction, and the Deputy Executive Secretary will maintain a register for unit employees who have requested transfers to offices under the Board's jurisdiction. The register shall at a minimum show the employee's name, grade, present assignment, and date of registration. Also, the employee will be expected to indicate whether he or she is interested in a transfer in grade or only with a promotion, and to list the office or offices to which he or she is interested in transferring. The Executive Assistant to the General Counsel and the Deputy Executive Secretary will, on a semi-annual basis, notify employees of the opportunity to sign up on the register, the dates on which placement on the respective transfer registers will be adjusted, and of the importance of maintaining their names on the register only for those offices to which they have a current interest in transferring.

Section 27.3. Transfers to Field Offices.

(a) In each year of this Agreement, the Agency will transfer, at no cost to the Agency, four (4) qualified employees from both of the units represented by the Association who are on the transfer register to field offices. The Agency will fulfill its obligation under this Section by making six (6) offers of transfer to employees on the register who have expressed an interest in being considered for a transfer pursuant to the notification in Section 27.5(a). Notwithstanding these requirements, the General Counsel is not obligated to make more than one (1) transfer to any particular region.

(b) In accordance with law and Governmentwide regulation, the Agency shall pay the transfer costs only if a transfer is primarily in the interest of the Agency.

(c) The fact that an employee has requested a transfer will not affect his or her status or tenure with the Agency, provided that where the transfer is offered to an employee, or where an offer is likely to be made in the immediate future, this may be taken into account in making work assignments to that employee.

(d) Notwithstanding the above, the Agency is under no obligation to transfer GS-14 employees at their current grade levels. However, if the transfer will result in a grade reduction, the transferee will be placed at the highest step permitted by law of his or her new grade. In the event that an employee offered a transfer would suffer a reduction in basic pay as a result of such transfer, the offer, if rejected, will not be considered as satisfying the requirements of this Section.

(e) Nothing herein shall preclude the General Counsel from transferring additional employees according to Agency needs.

Section 27.4. Placement on the Register.

(a) Transfer registers shall be available for inspection at all times.

(b) All employees who have a minimum of 1 year's unit seniority are eligible to sign the register, and may do so at any time. Time on the register will be calculated from the first day of the month in which the employee signs the register. The order, or placement, of names on the register will be adjusted, in accordance with (c) below, in January and July of each year.

(c) The names of the employees on the register shall be placed in order, based on the combined total of:

(1) the employee's number of months of continuous service in the Washington Headquarters offices of the Agency, and

(2) the number of months the employee's name has been on the register.

In the case of a tie in the combined total, the name of the employee with the most service (as determined in Subsection (1) above) will be placed on the register before the name of the less senior employee.

(d) Time on the register accrued prior to the execution of this Agreement shall be credited as in Section 27.4(c) of this Article in the preparation of a new register pursuant to this Article.

(e) The Agency shall notify employees on the register as of July 1 of each year of their obligation to renew their placement on the register by July 31 of that year. Failure to do so shall result in the deletion of the employee's name from the register.

(f) An offer of transfer shall be in writing and shall provide the employee at least two (2) weeks to respond. If an employee on a transfer register refuses to accept an offer of transfer without good cause, his or her name will be deleted from the register for the office involved.

(g) Removal from the transfer register pursuant to Subsection (f) above shall be automatic. The Association will be notified in writing of such removal. At the request of the Association, an employee so removed will be reinstated if it is shown that the employee's failure to accept an offer was due to good cause.

Section 27.5. Use of the Register.

(a) Whenever the General Counsel decides to staff a vacancy in a field office from the transfer register, all of the employees on the transfer list for that office will be notified. Notification will consist of an electronic mail message indicating that the Agency is considering filling a vacancy from the transfer list within a specified time period. The notice will provide appropriate contact information and will indicate that employees who are interested in being considered for a transfer at that time must communicate their interest within five (5) business days. Management will consider all employees who timely respond to this notification.

(b) Whenever the General Counsel determines to fill a vacancy in a field office from the transfer register, the Association will be notified immediately of that determination, and provided with the name of the employee selected and a list of all employees who had communicated interest pursuant to Section 27.5(a). Upon request, management shall advise any employee who had communicated his or her interest in a particular transfer of the reason(s) he or she was not selected.

(c) The transfer year shall coincide with the fiscal year.

Section 27.6. Transfers Within Headquarters.

(a) Whenever the General Counsel decides to staff a vacancy in a GC-side Headquarters office from the Association transfer register, all of the employees on the transfer list for that office will be notified. Notification will consist of an electronic mail message indicating that the Agency is considering filling a vacancy from the transfer list within a specified time period. The notice will provide appropriate contact information and will indicate that employees who are interested in being considered for a transfer at that time must communicate their interest within five (5) business days. Management will consider all employees who timely respond to this notification.

(b) Whenever the General Counsel determines to fill a vacancy in a GC-side Headquarters office from the Association transfer register, the Association will be notified immediately of that determination, and provided with the name of the employee selected and a list of all employees who had communicated interest pursuant to Section 27.6(a). Upon request, management shall advise any employee who had

communicated interest in a particular transfer of the reason(s) he or she was not selected.

Section 27.7. Involuntary Transfers.

Whenever management determines that a permanent reassignment of an employee is necessary due to a staffing imbalance, the Agency agrees that, to the extent consistent with work requirements, the employee (or employees) to be reassigned shall be chosen in the following manner:

(a) The Association and the employees from the staff(s)/division(s)/branch(es) from which the reassignment is to be made will be notified that the Agency is seeking volunteers for such reassignment. The notice shall set forth the office(s) to which the reassignment is to be made, the number of persons to be reassigned, the approximate time within which the reassignment is to take place, and the time within which the employees should respond to the solicitation for volunteers.

(b) In the event that there are no volunteers whom the Agency is willing to reassign, the person(s) to be reassigned shall be chosen by the Agency, taking into consideration such factors as management deems relevant including, but not limited to, relative qualifications, the needs of the granting and receiving offices, claims of personal hardship, and length of service. The Agency's decision of whom to select shall not be subject to the grievance/arbitration procedures.

(c) In the event of an involuntary transfer from headquarters to a field office (other than the Washington Resident Office), the employee chosen shall be given not less than sixty (60)-days advance notice before the reassignment becomes effective.

Section 27.8. Additional Transfers.

This Article does not limit the Agency's willingness or ability to transfer any additional employee, above and beyond the transfers discussed above, who requests a transfer.

Section 27.9. This Article does not limit the Agency's right to transfer employees, nor does it limit any other rights described in Section 4.1 (Management Rights), provided that in exercising these rights, the Board agrees to consult and/or bargain as appropriate with the Association to the extent required by law.

ARTICLE 28

THE EXCHANGE PROGRAM (DETAILS)

Section 28.1.

(a) The purpose of details is to further the broad objectives of training, career development, and professional growth of employees.

(b) The Exchange Program Committee will be responsible for the day-to-day operation of the Exchange Program as set forth in this Article. This committee will be composed of the Executive Assistant to the General Counsel (or other designee of the General Counsel), and a representative of the Association.

Section 28.2.

(a) The Board and the General Counsel having agreed to the Exchange Program, the General Counsel hereby agrees that, consonant with budgetary and staffing considerations, a minimum of twelve (12) assignments ("details") will be offered each year, with eight (8) allocated to field assignments. For the purposes of the above-referenced allocation, an assignment to the Washington Resident Office is considered a field assignment. Any field assignment to the Washington Resident Office shall not be subject to budgetary considerations. The Agency will normally pay the cost of details unless budgetary considerations prevent such payment.

(b) In allocating such details among the Regional Advice/Injunction Litigation/Legal Research Branches, Office of Appeals, and Appellate Court/Contempt/Special Litigation/Supreme Court Branches, the number of unit employees in each of the respective staffs on the date of the announcement of details for the upcoming year will be considered. The precise allocations will be determined by the General Counsel after receiving the recommendations of the Committee.

(c) At least ten (10) Regional Offices designated by Operations-Management and all law-related Washington offices, except the Division of Operations-Management, will ordinarily be available for these assignments. Management may consider employee requests for details to offices not so designated.

(d) In August of every year, the Division of Operations-Management will identify those Regional Offices that are able to accept the assignment of a Headquarters unit employee and will transmit that information to the Exchange Committee no later than August 31. Thereafter, on the date of the announcement of details for the upcoming

year, the Committee will notify potential exchange applicants of the Regional offices to which they may apply.

(e) Subject to budgetary and staffing considerations, the duration of assignments pursuant to this provision shall be as follows: Field and Washington assignments will ordinarily be for 75 to 180 days, except that assignments in excess of 75 days will be at the discretion of the General Counsel, and except further that Appellate Court/Contempt/Special Litigation/Supreme Court assignments will ordinarily be for 90/120 days.

(f) The parties recognize that exigencies in the specific work assignments of an employee on detail may require a reduction or an extension beyond the limits set forth in (e) above.

Section 28.3.

(a) Timely announcements to meet the requirements of the Exchange Program will be issued after determination by the General Counsel as to the number and duration of the details to be offered along with whatever information may be available as to the place of the detail.

(b) Selection of employees for details under this Exchange Program will be made by the General Counsel after receiving recommendations from the Exchange Program Committee. Recommendations will be based on the criteria set forth in Section 28.4. In making the final selection of employees for details, the General Counsel may also take into consideration the qualifications of a particular employee to perform the work ordinarily performed in the receiving office and the operating needs of the granting office. Details normally will begin and end within the same fiscal year. Details outside the employee's normal commuting area will be full-time assignments.

(c) To the extent practicable, every reasonable effort will be made to announce the Exchange Program a month before the beginning of the fiscal year and to arrange details in advance of, or early in, that year.

(d) The Exchange Program year shall coincide with the Agency's fiscal year. For a period of two (2) weeks commencing 1 month prior to the beginning of the fiscal year, the Exchange Committee shall solicit applications for details under this Article.

(e) In the event that an employee declines to take a detail which he or she has been awarded, that detail may be reallocated to another individual in the same branch in accordance with Sections 28.2(b) and 28.4 of this Article, provided that, under normal circumstances, management receives notice of such declination in sufficient time that the replacement detail can be completed within the fiscal year. The

foregoing limitation does not apply to details within Headquarters, or to Region 5 and the Washington Resident Office.

(f) Acceptance of a detail under this Article will not prejudice an employee's rights as set forth in Article 14 (Performance Appraisal System).

Section 28.4.

(a) Any unit employee who (1) has a minimum of twelve (12) months of Headquarters service before leaving on a detail, and (2) has received a summary rating of fully successful or above, is eligible for an assignment under this Article. In the event that the number of eligible applicants exceeds the number of details to be allocated to each office or branch in accordance with Section 28.2(b) of this Article, the Exchange Committee shall recommend the award of details to the eligible applicants in order of seniority. Seniority, for the purpose of this subsection, shall be computed by the Agency seniority date.

(b) Repeat Exchange Assignments.

(1) An employee who has performed an Exchange detail in the past is not eligible to perform another detail for three (3) years from completion of the detail.

(2) After three (3) years, an employee who has been on a Washington detail is eligible to perform a field detail and will be treated, for such purposes, as having never been on an Exchange detail.

(3) After three (3) years, an employee who has been on a field detail is eligible to perform a Washington detail and will be treated, for such purposes, as having never been on an Exchange detail.

(4) After three (3) years an employee who has performed a Washington detail may be eligible to perform another Washington detail if there are remaining Washington details to be filled after management has assigned such details to all first time applicants. If there are two (2) or more applicants who are repeating, then details will be awarded based upon seniority.

(5) After three (3) years an employee who has performed a field detail may be eligible to perform another field detail if there are remaining field details to be filled after management has assigned such details to all first time applicants. If there are two (2) or more applicants who are repeating, then details will be awarded based upon seniority.

(6) Notwithstanding paragraphs (4) and (5) above, an applicant who has not performed an Exchange detail for ten (10) years will be treated as having never been on an Exchange detail.

(c) Employees who have transferred to Headquarters from the field will be considered as having performed field details in applying Section 28.4(a), (b), and (c) of this Article, and employees who have transferred from one activity to another in Headquarters (not including intra Board-side transfers) will be considered as having performed Headquarters details in applying Sections 28.4(a), (b), and (c) of this Article.

Section 28.5. Any unit member who has been awarded a detail and thereafter wishes to decline it shall notify the Exchange Committee in writing not less than sixty (60) days prior to the originally scheduled commencement date of the awarded detail; provided, that in the case of a unit member who has been awarded a detail which was scheduled to commence less than sixty (60) days after its award, the unit member shall notify the Exchange Committee in writing of the desire to decline the detail not less than thirty (30) days prior to the originally scheduled commencement date.

Section 28.6. Any person failing to comply with the above provision shall be barred from bidding on a detail for the remainder of the current contract year, absent a showing of extraordinary or unforeseen circumstances beyond the unit member's control. Should a unit member believe that his or her situation is covered by the above exception for extraordinary or unforeseen circumstances, he or she should state such circumstances, in detail, to the Exchange Committee. The Exchange Committee shall be responsible for determining whether a unit member's particular situation fits within this exception for extraordinary or unforeseen circumstances. The Exchange Committee's decision shall be final.

ARTICLE 29

PROFESSIONAL TRAINING

Section 29.1. The Association and the General Counsel consider professional training a matter of great importance to the Agency and its professional employees. The Professional Training Committee, consisting of a representative of the General Counsel and a representative of the Association, will submit recommendations to the General Counsel concerning the training of unit employees. Recommendations may involve, but are not limited to, reimbursement for tuition for labor related graduate and law courses and professional conferences and attendance at Board elections and unfair labor practice hearings. Guidelines for the operation of the committee concerning specific kinds of professional training shall be established by the Committee subject to the approval of the General Counsel.

Section 29.2.

(a) The Training Program year shall coincide with the Agency's fiscal year. Consistent with budgetary considerations, the Agency shall make $28,500 available for the above purposes in each of the three (3) years covered by this Agreement. Initially, an amount of $10,000 will be earmarked for the sole use of GC-side employees. In addition, an amount of $18,500 will be obligated under this Agreement toward a joint fund that will be available to unit attorneys of the GC or the Board.[7] At the end of the third quarter of each fiscal year, any money that remains from the earmarked fund will be added to the joint fund for use by any unit employee of the GC or the Board.

(b) Subject to budgetary considerations, the Training Committee will determine which conferences and courses are appropriate for reimbursement, and in what amount. The Training Committee will also determine the amount of administrative leave that will be granted for attendance at approved conferences provided that casehandling needs do not require the employee's presence.

(c) The Training Committee shall, prior to a particular conference, announce the amount of funding available to be used for travel and living expenses.

Section 29.3. An employee will not be deemed ineligible to attend a conference solely because he or she has received benefits under this Article during the previous year. The Training Committee will select

[7] An amount of $18,500 will also be obligated to the joint fund under the Agreement between the Board and the Association. That amount will likewise be available to attorneys in both the GC-side and Board-side bargaining units.

from all those eligible employees who apply for training under this Article. However, in order to insure that the benefits available under this Article are shared by as many employees as possible, an employee will ordinarily not be eligible to attend the conference unless he or she has (a) been employed in the unit for a minimum of 6 months prior to the conference and (b) has received benefits under this Article on fewer than three occasions in the year preceding the date of the conference. Requests to observe Board elections and unfair labor practice hearings may be approved by the Training Committee.

Section 29.4. In determining which eligible employee(s) who have expressed an interest in a particular conference will be selected to attend, subject to the above, the following factors will be considered by the Training Committee:

(a) length of unit, staff, and Agency employment;

(b) frequency of participation in the program;

(c) active involvement in the program of a particular conference;

(d) the amount of training funds available;

(e) the anticipated interest in future conferences during the remainder of the year;

(f) whether the applicant received or was recommended for the last regular within grade or promotion.

Section 29.5. The implementation of this Article shall be monitored by the Training Committee.

Section 29.6.

An employee may request a conference with his or her supervisor for the purpose of discussing career development opportunities and goals. Such requests will be granted and, consistent with operating needs, conferences will be scheduled at reasonable times and at reasonable intervals consistent with the employee's developmental needs.

Section 29.7. The Agency will consult with the Association to identify the best approach for orienting new unit employees to the functions of the various Headquarters legal offices. An effort will be made to utilize unit employees in the orientation program.

Section 29.8. Training Assignments.

(a) Management may make training assignments to develop employees' skills and broaden their experiences in the various aspects of Agency work relevant to their current jobs. Management expects that the duration of training assignments generally will be consistent with the time frames set forth in Article 28 (Exchange Program (Details)).

(b) When making and scheduling training assignments management will consider the employee's skills and development needs, the employee's past training experiences, the employee's length of service, the nexus between the training assignment and the employee's current job, whether the employee has volunteered for such training, and any claim of personal hardship.

(c) Annual performance appraisals will include recognition that an employee has performed training assignments and, where required by law or regulation, will provide evaluations of the employee's work outside his or her regularly assigned office. Work assigned pursuant to this Article, and the work of the employee's regular position, shall be regarded as of equal importance for the purpose of promotions, monetary awards, and time-off awards.

(d) Absent extraordinary circumstances, it is management's policy not to make training assignments that would require geographic relocation. Nothing in this Article, however, precludes management from making a training assignment that requires out-of-town travel consistent with past practice.

(e) An employee who works a schedule other than standard business hours, may continue his or her existing work schedule when on a training assignment in accordance with Article 33 (Hours of Work) of this Agreement consistent with the established practice of the receiving office.

(f) If management develops a schedule of training assignments for all, or a significant percentage of, employees in a particular office, management will notify the Association prior to implementation.

(g) Training assignments made by management under this Article are not intended to reorganize any office of the General Counsel or the Board. Reorganizations are governed by the procedures set forth in Section 38.4.

Section 29.9. Career Development.

(a) The Agency will provide opportunities for career development to unit employees who are interested in acquiring those skills necessary to be considered for supervisory or management positions. Such opportunities may include in-house training programs; participation in other Federal agency programs; acting supervisor assignments; and mentoring programs.

(b) The Agency acknowledges an ongoing commitment to Agency sponsored skills programs, conferences, and continuing legal education.

(c) It is management's policy to assist an employee who needs skills enhancement. In deciding whether an employee needs skills enhance-

ment, management will take into consideration the employee's self-assessment of needs.

(d) An employee may request the Agency to grant leave without pay after completion of 5 years of service with the Agency to engage in job-related study or other career enhancement endeavor. The decision whether to grant such requests shall be within the sole and unreviewable discretion of the Agency, and not subject to the grievance and arbitration procedures.

Section 29.10. Grievability. Although individual assignments of work made pursuant to this Article are excepted from the grievance and arbitration procedures of Article 10 and Article 11, the parties recognize that all other matters otherwise subject to the grievance and arbitration procedures, including the failure to follow the assignment procedures in Section 29.8 above, remain subject to the grievance and arbitration procedures.

ARTICLE 30

VOLUNTARY DEDUCTION OF PROFESSIONAL ASSOCIATION DUES

Section 30.1. Payroll deductions for the payment of Association dues will be made from the pay of unit employees who voluntarily request such deductions. In implementing this Article the parties will be governed by the provisions of this Agreement and 5 U.S.C. § 7115 and applicable regulations.

Section 30.2. Any employee desiring to have his or her Association dues deducted from his or her pay may, at any time, complete and sign the appropriate portions of Standard Form 1187, "Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues." Section A of the form will be completed and certified by the Treasurer of the Association or his or her designee, who will forward or deliver it to the payroll office, where it must be received by 12 noon on the first Wednesday of the pay period to be processed for that pay period. Dues will be deducted effective at the beginning of that pay period. The Association will be responsible for insuring that the forms are properly completed and certified before transmitting them to the Agency.

Section 30.3. Authorized deductions will be made each biweekly pay period from the pay of an employee who has requested such allotment for dues in accordance with this Agreement. It is understood that no deduction for dues will be made by the Agency in any period for which the employee's net earnings after other deductions are insufficient to cover the full amount of the dues allotment.

Section 30.4. The dues will be transmitted by the Agency to the Treasurer of the Association or its designated agent by direct deposit, not later than 2 weeks after the close of each pay period. With each payment the Agency agrees to provide the Association or its agent with a list showing the names of the employees involved, the amount deducted for each employee, and the total amount of dues withheld for the pay period in question. Within a week thereafter, the Agency will provide to the Association a list of employees' names and locations.

Section 30.5. An employee who has authorized the withholding of dues may request revocation of such authorization by completing and submitting to the payroll office a Standard Form 1188. Upon receipt of a revocation form, the Agency will discontinue the withholding of dues from the employee's pay effective the first full pay period after the first anniversary of the employee's execution of Standard Form 1187.

However, in the case of an employee who has been on dues checkoff for more than 1 year, the Agency shall discontinue the withholding of dues from the employee's pay effective the first full pay period after March 1 of any calendar year. The Agency shall promptly provide the Association with copies of all such revocations received.

Section 30.6. The Association will furnish the Agency, at the earliest practicable date, with a current listing of the authorized union officials who are designated by the Treasurer of the Association to certify Section A of Standard Form 1187 on his or her behalf. The Association will be responsible for giving the Agency prompt written notification of any change in this information. Changes in the amount of labor organization dues for payroll deduction purposes shall not be made more frequently than twice in any 12-month period.

Section 30.7. All deductions of Association dues provided for in this Agreement shall be automatically terminated in the event of loss of exclusive recognition by the Association. Any individual allotment for dues withholding shall also be automatically terminated upon the separation or transfer of the employee from the unit unless, in the case of a transfer, the employee transfers to another unit for which the Association is the exclusive bargaining representative and there is a dues deduction agreement for that unit.

Section 30.8. The Association will give prompt written notification to the Agency in the event any employee participating in the dues deduction program ceases for any reason to be a member in good standing in order that the Agency may terminate his allotment for dues.

ARTICLE 31

LAW STUDENT EMPLOYEES

Section 31.1. The following provisions of this Agreement apply to law student employees in the unit:

Article 3 (Precedence of Law)
Article 4 (Management Rights and Obligations)
Article 6 (Employee Rights and Responsibilities)
Article 8 (Association Rights and Obligations)
Article 9 (Equal Employment Opportunity)
Article 10 (Grievance Procedure/Alternative Dispute Resolution)
Article 11 (Arbitration)
Article 13 (Calculation of Service)
Article 20 (Compensatory Time)
Article 21 (Official Time for Representational Functions)
Article 22 (Leave)
Article 25 (Facilities and Services)
Article 26 (Health and Safety)
Article 30 (Voluntary Deduction of Professional Association Dues)
Article 38 (Duration and Effect of Agreement)

Section 31.2. Appraisals.

Law Student employees, as defined in Section 2.2, employed by the Agency shall receive a written narrative appraisal of their performance on their last regularly scheduled day of work.

Section 31.3. A first-line supervisor or attorney mentor shall meet regularly with their law student(s) to provide guidance and assistance in performing their work.

ARTICLE 32

REDUCTION IN FORCE

Section 32.1. Statement of Purpose.

Management agrees that, consistent with what it determines are the operating needs of the Agency, it is the policy of the Agency to attempt to avoid Reduction in Force (RIF) actions with respect to unit employees and to attempt to minimize the impact of such upon unit employees. In the event that the Agency experiences a budgetary shortfall that impairs its ability to operate, the parties agree that the provisions of Section 4.2 of this Agreement shall first be utilized in an attempt to avoid a RIF action.

Section 32.2. Notification to the Association.

(a) The event that a RIF becomes necessary, management will notify the Association as soon as practicable, but no less than three (3) calendar days prior to the issuance of a notice to affected unit employees. The notice shall set forth the following:

(1) the reason(s) for the proposed action;

(2) the projected number and type of positions which may be affected initially, and

(3) the effective date that action will be taken.

(b) Within two (2) business days subsequent to the above notice, an Agency official will orally brief the Association on the RIF action.

Section 32.3. Notification to Employees.

Affected employees will be provided with specific notice at least sixty (60) calendar days prior to the effective date of a RIF action.

Section 32.4. Extension of Rights.

The employees of the bargaining unit are covered by the procedures set forth in the Reduction In Force Chapter of the Agency's Administrative Policies and Procedures Manual (APPM) in effect on the date of the execution of this Agreement. Unit employees shall not be denied any rights, most notably bumping and retreating rights, set forth in the APPM based on membership in the excepted service.

Section 32.5. Negotiations.

In the event that a RIF becomes necessary, management will give the Association notification in accordance with Section 32.2 and will bargain to the extent required by law.

ARTICLE 33

HOURS OF WORK

Section 33.1. General.

The parties agree that the use of alternative work schedules ("AWS") has the potential to enhance employee morale and improve productivity. Accordingly, it is the Agency's policy to accomplish its mission while accommodating individual employee schedule needs in an atmosphere of shared accountability and responsibility among employees, supervisors, and managers.

Section 33.2. Generally Applicable Provisions.

(a) The Basic Work Requirement is the total number of hours in each biweekly pay period (80 hours) that a full-time employee is required to account for by means of hours worked, leave, or credit hours taken. The work requirement for a part-time employee depends on his or her schedule.

(b) When a particular work assignment involving an individual not employed by the Agency, or involving a General Counsel or Board Agenda, requires an employee's attendance during normal office hours which are outside his or her flexible or compressed schedule, the employee shall notify his or her supervisor as far in advance as practicable. In such circumstances management may, at its option, either authorize the employee to earn compensatory time off or allow the employee to modify his or her work schedule to the extent necessary to ensure the employee's presence during that time.

(c) Core hours/days are the hours/days during which an employee must either be present for work or use leave or credit hours. The Agency's core hours are 9:30 a.m. to 3:30 p.m., Monday through Friday.

(d) Flexible Band is the period of time before and after the core hours during which employees can schedule starting and quitting times. The flexible bands in the morning are from 6:00 a.m. to 9:30 a.m., and in the afternoon from 3:30 p.m. to 8:00 p.m.

(e) Credit Hours are hours worked by an employee on a flexitime work schedule in the office in excess of the employee's Basic Work Requirement. Credit hours are earned at the employee's election. Full-time employees can accumulate not more than twenty-four (24) credit hours, and part-time employees can accumulate not more than one-fourth (1/4) of the hours in such employee's pay period schedule, for carryover from a pay period to succeeding pay periods. Credit hours can be earned only Monday through Friday during the flexible bands. Credit hours

may be used in lieu of annual or sick leave. Credit hours may be used during core hours with supervisory approval, which shall be granted as liberally as other leave. Credit hours may not be earned in travel status. Only those employees on a flexitime work schedule can earn credit hours. Credit hours may not be used to create a regular 4-10 work schedule. Employees may not work more than 10 hours in any given day without supervisory approval.

(f) Any unit employee whose most recent performance appraisal summary rating is fully successful or higher is eligible for any flexible or compressed work schedule.

(g) Employees are not eligible to work weekend hours as part of the standard workweek. When weekend work is required for the timely completion of Agency work, however, an employee may earn compensatory time pursuant to Article 20 (Compensatory Time).

(h) Employees who are on flexible work schedules may not earn credit hours while on work related travel, but may receive compensatory time pursuant to Article 20 (Compensatory Time). Attorneys shall keep a record of their time spent in work-related duties while in travel status.

(i) A unit employee who works a schedule other than standard business hours may continue his or her existing work schedule when on a detail to another office at the sole discretion of the receiving office.

Section 33.3. Standard Business Hours Schedule.

(a) Definition.

Under this schedule, an employee works Monday through Friday, 8:30 a.m. to 5:00 p.m.

(b) Hours Worked in Excess of Forty (40) in a Week.

Standard business hours employees are not eligible to earn credit hours but are eligible to earn compensatory time under the conditions set forth in Article 20 (Compensatory Time) of this Agreement.

(c) Sign-In/Sign-Out.

Standard business hours employees are not required to sign in or sign out.

Section 33.4. Flexitour Schedule.

(a) Definition.

Flexitour is a flexible schedule of eight (8) hours per day, Monday through Friday, in which an employee, having once selected starting and quitting times within the flexible bands, continues to adhere to those times. Further opportunities to select different starting and quitting times may be agreed to by the employee's supervisor.

(b) Conditions.

Employees must specify their scheduled arrival and departure times for each workday in the biweekly pay period within the flexible time bands. Once the employee's schedule is approved, he or she must continue the fixed pattern of arrival times and work for eight (8) hours each day until a different work schedule is approved by the supervisor. Employees will notify supervisors, colleagues, and front offices of their schedules by mutually acceptable means established by employees and management at the individual shop level.

(c) Hours Worked in Excess of Forty (40) in a Week.

Flexitour employees are not eligible to earn credit hours, but are eligible to earn compensatory time under Article 20 (Compensatory Time) of this Agreement.

(d) Sign-In/Sign-Out.

Flexitour employees are not required to sign in or sign out.

Section 33.5. 5-4-9 Compressed Work Schedule.

(a) Definition.

5-4-9 compressed work schedules consist of 9 workdays and 1 predetermined day off in each pay period. Eight (8) of the work days are nine (9) hours in length, one (1) workday is eight (8) hours in length, and one is the employee's predetermined day off. Eligible employees may request any schedule in which the beginning and ending times occur during the flexible band hours.

(b) Hours Worked in Excess of Forty (40) in a Week.

Employees on 5-4-9 schedules are not eligible to earn credit hours, but are eligible to earn compensatory time pursuant to Article 20 (Compensatory Time) of this Agreement.

(c) Time Recording.

Employees on 5-4-9 schedules will record in seriatim their arrival and departure at the beginning and end of their workday by signing a list at a mutually agreeable location noting their actual time of arrival and departure. The forms for this purpose shall be supplied by management.

(d) Switching Compressed Days Off.

An employee on 5-4-9 may elect to work on his or her compressed day off and take off a different day within the pay period, with advance supervisory approval. If management requires the employee to work on his or her compressed day because of work exigencies, that employee may take off a different day within that pay period, with advance

supervisory approval. If the employee is unable to use the compressed day because of work exigencies, that employee is entitled to compensatory time under the procedures set forth in Article 20 (Compensatory Time) of this Agreement.

(e) Participation in conferences, training, or travel status.

Employees participating in conferences, training programs, or travel status, for up to three (3) days during any portion of a pay period, may participate in the compressed work schedule program during the pay periods involved, or, at their option, may revert to the regular schedule for these pay periods. However, any resulting deficiencies in scheduled working hours must be made up by the affected employee during the same pay period by switching the scheduled eight (8) hour day in that pay period to coincide with the outside activity, by working the deficient hours during the pay period, and/or by taking annual or other accrued nonsick leave.

(f) Holidays.

An employee whose compressed day falls on a Federal holiday shall be allowed an "in lieu of" holiday selected in the manner set forth in applicable Federal rules or regulations. If an employee's regularly scheduled day off is Monday and that day is a Federally observed holiday, the employee is entitled to the following day off. If an employee's regularly scheduled day off is any other weekday (Tuesday through Friday) and that day is a Federally observed holiday, the employee is entitled to the preceding workday off.

Section 33.6. Flexitime Schedule.

(a) Definition.

Under flexitime, employees must be at work or on approved leave during core hours and must account for the total number of hours in a bi-weekly pay period that they are scheduled to work. Employees will establish regular schedules and make management, supervisors, and colleagues aware of them. A full-time employee must account for eighty (80) hours in a pay period. Employees may vary the length of the workday and are only required to be present during core hours. Employees who work less than the required hours in any pay period must take leave or use credit hours.

(b) Hours of Work.

A full-time employee opting for a flexitime schedule is required to work eighty (80) hours per pay period. A part-time employee is required to work the number of hours required by his or her schedule. Employees electing flexitime must be present in the office from 9:30 to 3:30, Monday through Friday. Arrival and departure times are flexible. When employees intend to depart from the schedules they have established, they will notify management by a mutually acceptable notification method. Employees on flexitime schedules may work at the office between 6:00 a.m. and 8:00 p.m., Monday through Friday.

(c) Credit Hours.

Flexitime employees are eligible to earn credit hours.

(d) Sign-In/Sign-Out.

Employees on flexitime will record in seriatim their arrival and departure times at the beginning and end of their workday by signing a list at a mutually agreeable location noting their actual time of arrival and departure. The forms for this purpose shall be supplied by management. Employees in this program must also keep time sheets, certify them, and turn them in at the end of the pay period.

Section 33.7. Request and Approval.

(a) A request by an eligible employee for an alternative work schedule shall be granted promptly, unless the proposed schedule is incompatible with the Agency's mission and workload requirements. Any failure to grant a request by an eligible employee for an alternative work schedule shall be subject to the grievance and arbitration procedures of the Agreement.

(b) Employees may request a permanent or temporary change in the type of schedule or in the hours worked within a given fixed schedule. A request by an eligible employee for a change or modification in his or her alternative work schedule shall be granted promptly, unless the proposed schedule is incompatible with the Agency's mission and workload requirements. Requests for modifications should be submitted prior to the effective date of the change in accordance with established Agency timekeeping procedures.

(c) If a request by an eligible employee for, or a continuation of, an alternative work schedule is incompatible with the Agency's mission and workload requirements due to a conflict with another unit employee's proposed or current work schedule, the affected employees, with the participation of the Association, will attempt to resolve the conflict. In the event no resolution is reached, conflicts shall be resolved first by giving compressed days priority over work-at-home days, and resolving

any remaining conflicts in accordance with standards agreed to by employees within the shop. In the absence of agreed-upon standards, shop seniority as defined by each shop will control.

Section 33.8. Work Schedule Removal and Suspension.

An employee may be removed or suspended from an alternative work schedule and returned to a standard business hours schedule:

(a) when the employee receives a summary performance appraisal rating of less than fully successful;

(b) when continuation of the alternative work schedule would substantially interfere with the operating needs of the office; or

(c) for just cause.

Section 33.9. Other Work Schedules.

Nothing in this Agreement is meant to limit any existing or future arrangement between management and employees in the individual offices regarding other types of work schedules that are designed to balance operating needs with employee flexibility. Employees may request, and management in its discretion may grant, greater flexibility of work hours.

ARTICLE 34

FLEXIPLACE

Section 34.1. Principles. The purpose of the flexiplace program is to provide employees with opportunities to perform their official duties at home under one of three types of arrangements: (1) establishment of a regular schedule that includes work at home; (2) work on a specific project for a definite duration; and (3) accommodation of an employee's medical condition or special circumstance. Certain types of work are amenable to a flexiplace program, including reading of transcripts, writing of decisions and reports, and legal research where the materials are accessible by computer, library, or are readily transportable.

Section 34.2. Generally Applicable Provisions.

The following provisions are applicable to all three flexiplace arrangements, subject to the particular conditions pertaining to each program.

(a) Eligibility: All unit employees rated at least Fully Successful on all critical elements are eligible to participate in a flexiplace work arrangement. Employees on a compressed 5-4-9 work schedule are not eligible to participate in flexiplace.

(b) Conditions: In order to be approved for a flexiplace work arrangement, the eligible employee must satisfy the following conditions:

(i) The employee must have suitable work to be performed outside of the office.

(ii) The employee must provide and will be responsible for installing and maintaining all necessary equipment at the home worksite to accomplish the performance of the employee's work tasks. This shall include means for communicating with, and receiving communications from, the office (e.g., a telephone), and may also include, as determined by management, such devices as a computer, compatible software, and e-mail. The Agency will not be responsible for any costs and/or support related to this program.

(iii) The home worksite must be a safe work environment and the employee must provide a certification that the work premises are safe.

(iv) The employee's performance of work under this program may not result in more than a de minimis

duplication of work or other inefficiencies that would not occur if the work were performed in the office.

(v) The employee must arrange for any necessary child care, medical care, and elder care coverage at the home worksite. The flexiplace arrangements are not intended to allow employees to replace these types of coverage with their own presence.

(c) Accountability: Before beginning a period of flexiplace, the participating employee shall discuss with his or her supervisor the work to be performed at home. The employee shall provide the supervisor and higher management with the information necessary to contact the employee at home. Throughout the work-at-home day, the employee shall be available to be contacted by telephone and/or e-mail, and will promptly return all messages left by managers, supervisors, other employees, or outside parties seeking to discuss Agency business.

(d) Scheduling: The scheduling of flexiplace shall be subject to the operational needs of management to accomplish the Agency's mission and to assure adequate office coverage to satisfy that objective. In exercising its discretion under this Section, management will take into account the number of employees working at home under this Article, as well as employees absent from the office because of other work programs provided for in this Agreement, annual leave, sick leave, and part-time employment.

(e) Grievability:

Denying an employee's request to enter a flexiplace program shall be subject only to the Alternative Dispute Resolution procedures of Article 10 of this Agreement, on a mandatory basis. The decision to remove an employee from a flexiplace program, however, shall be subject to the grievance-arbitration provisions of this Agreement (Articles 10 and 11).

(f) Miscellaneous:

(i) All pay, leave, and travel entitlement will be based on the employee's official duty station.

(ii) All leave requests must be submitted in accordance with Agency provisions as they existed at the date of execution of this Agreement.

(iii) Timekeeping procedures will include a requirement that employees working in a flexiplace arrangement will sign a certification each pay period that records the times and hours worked. Certifications will be reviewed and signed by the employee's timekeeper.

(iv) Employees shall not be reimbursed for expenses associated with commuting or traveling between the official duty station and home.

(v) Credit hours cannot be earned at the flexiplace worksite.

Section 34.3. Regularly Scheduled Flexiplace.

(a) Definition: Regularly Scheduled Flexiplace is an arrangement by which a unit employee is permitted a maximum of 1 scheduled 8-hour day per week to perform official duties at home.

(b) Participation and Selection:

(i) The eligibility provisions of Section 34.2(a) of this Article apply to the regularly scheduled flexiplace program. In addition, part-time employees are not eligible to participate in regularly scheduled flexiplace, except to the extent they are willing to work additional hours.

(ii) Where at any time there are more employees interested in participating in a regularly scheduled flexiplace program than management can accommodate based on its operating needs, selection for participation will be based on a system established after consultation by the office's management with the shop steward or other representative designated by the Association.

(iii) Management retains the right, based on operating needs, to limit participation in the regularly scheduled flexiplace program.

(c) Scheduling:

(i) A maximum of 1 day per week of work at home will be allowed.

(ii) The regular work-at-home day shall be scheduled for a specific day that will be the same each week. In selecting this day, management will make every reasonable effort to accommodate the employee's preference. Flexiplace days may not be traded, exchanged, or saved. Scheduled flexiplace days not used for any reason (management or employee choice) shall be forfeited.

(iii) Management may, for operating needs, require an employee on a regularly scheduled flexiplace arrangement to come into the office on a particular flexiplace day. This includes, but is not limited to, occasions when the employee is required to attend a meeting scheduled in the office.

Management will make reasonable efforts to give the employee advance notice so as to allow the employee to commute during his or her regular commuting schedule.

(iv) Nothing in this Section is intended to infringe on management's right to assign work.

(d) Accountability: An employee on a regularly scheduled flexiplace program must discuss with his or her supervisor, in advance of the scheduled work-at-home day, what work that will be performed at home. On the employee's next day in the office, he or she is expected to report to the supervisor regarding the work that was accomplished at home. If an employee does not have sufficient work to occupy a full day at home, he or she should either report to the office or take leave.

(e) Temporary Suspension of Program: Management has the right to suspend flexiplace schedules based on operating needs. For example, such suspensions may occur, for Board-side employees, in the rush month of September each year, as well as the final month of any Board Member's term (for employees handling cases on which such Board Member is participating).

(f) Removal: An employee may be removed from a regularly scheduled flexiplace program for any of the following reasons:

(i) Decline in performance to a level on any critical element below that of "Fully Successful;" provided, that before removing an employee from a regularly scheduled flexiplace program for reasons related to performance, the employee will be provided with an opportunity to appeal the initial determination to the Division Head or Chief Counsel. Such appeal may be oral or written, and must be made within five (5) business days of the initial determination.

(ii) When continuation of a regular flexiplace schedule would interfere with the operating needs of the office.

(iii) For just cause.

Section 34.4. Project-Specific Flexiplace.

(a) Definition and Applicable Principles: Project-Specific Flexiplace is an arrangement under which an employee with a finite, identified project is permitted to perform that work at home. The grant of a project-specific flexiplace request will be at management's discretion. Employees working under a project-specific flexiplace arrangement are subject to the provisions set forth at Sections 34.2(b) and (c) of this Article. During the period that work is being performed at home, the employee shall report to his or her supervisor, at times to be determined by management, on the progress being made regarding that work.

(b) Removal:

(i) A project-specific flexiplace arrangement will end at the date agreed to in advance by management and the employee for the conclusion of the project, or at the date of the completion of the project, if that occurs earlier. At management's discretion, the duration of a project-specific flexiplace may be extended.

(ii) In addition, an employee may be removed from a project-specific flexiplace arrangement pursuant to the provisions of Section 34.3(f) of this Article.

Section 34.5. Accommodation of Medical Condition and Special Circumstance Flexiplace.

(a) Definition: Accommodation of Medical Condition and Special Circumstance Flexiplace is an arrangement by which an employee with a temporary medical or health-related condition or other personal situation that makes it infeasible for the employee to commute to the office is permitted to perform work at home. Under this arrangement, the employee's medical condition or special circumstance does not impair him or her from performing official duties at home. On request, the employee seeking to be on or already on accommodation flexiplace will produce medical documentation.

(b) Applicable Principles: Management retains the sole discretion to grant an employee's request to work at home to accommodate a medical condition or special circumstance. Employees working under this type of flexiplace arrangement are subject to the provisions set forth at Sections 34.2(b) and (c) of this Article. During the period that work is being performed at home, the employee shall report to his or her supervisor, at times to be determined by management, on the progress being made regarding that work.

(c) Removal:

(i) Employees will leave the program at the time agreed to in advance with management or when they are physically able to return to work in the office. An extension may be granted at management's discretion.

(ii) In addition, an employee may be removed from a medical flexiplace arrangement pursuant to the provisions of Section 34.3(f) of this Article.

Section 34.6. Telecommuting.

Telecommuting is an arrangement under which an employee performs all or most of his or her work at home, and is present in the office only

sporadically or when necessary because of operating needs. During the first year of this Agreement, management and the Association will determine the interest of the employees in a telecommuting program, and undertake a joint study of the subject to determine such things as cost and the practicability of the program. Based on this study, management will examine the possibility of implementing a pilot telecommuting program during the second year of the Agreement. During the third year of the contract, the parties will meet and discuss the operation of any pilot program that may have been implemented pursuant to this Section.

ARTICLE 35

FLEXIBLE WORK ASSIGNMENTS

Section 35.1.

To facilitate the Agency's efforts in meeting its operational needs and to enhance employee opportunities for career development, management and the Association agree to the following Flexible Work Assignments procedures. Flexible Work Assignments made by management under this Article are not intended to reorganize any office of the General Counsel or the Board. Reorganizations are governed by the procedures set forth in Section 38.4.

Section 35.2. Definitions.

(a) The term "short term flexible work assignment" refers to the assignment of work from one Branch to another Branch in the Division of Enforcement Litigation, from one Division within the General Counsel's office to another, from the GC-side to the Board-side, or from the Board-side to the GC-side.[8] Such assignments generally will not last more than 30 days and may consist of either one case that may last for a significant period of time or several cases on a short-term basis.

(b) The term "long term flexible work assignment" refers to work performed by an employee for an office outside his or her Branch within the Division of Enforcement Litigation or outside his or her Division or Board Office, for more than 30, but normally not more than 120, days. Generally, the employee will not also continue to perform work from his or her regularly assigned office.

Section 35.3. Volunteer Register. A single register will be created for Headquarters GC-side and Board-side employee volunteers for the assignment of cases from outside their regularly assigned Divisions or, in the Division of Enforcement Litigation, from outside their regularly assigned Branch. The register will be maintained by the Executive Secretary with an up-to-date copy maintained by the Associate General Counsel for the Division of Enforcement Litigation. Employees shall indicate whether they are volunteering for short-term or long-term flexible work, and may designate their preferences of offices within Headquarters or the types of work to be performed for Regional Offices (R case decision drafting and telephonic investigations), or both. Employees who wish to volunteer must register on a quarterly basis. The register is open to any unit employee who has a minimum of twelve (12) months of Headquarters service.

[8] Work assignments within the Division of Advice on the GC-side are not Flexible Work Assignments, and this Article does not address them.

Section 35.4. Assignment Procedures.

(a) Whenever management determines that there is a need to make a flexible work assignment within the meaning of this Article, the General Counsel and the Board agree that management will give consideration to employees on the register before considering employees not on the register.

(b) In the event that there are no volunteers on the register to whom management is willing to assign the work, the person to be assigned shall be chosen by management, taking into consideration such relevant factors including, but not limited to, relevant qualifications, the need of the granting and receiving offices, claims of personal hardship, length of service, and prior involuntary flexible work assignments.

(c) Upon the request of an individual employee or the Association, management will provide a reason as to why a particular individual was, or was not, chosen for a specific flexible work assignment.

(d) Absent extraordinary circumstances, it is management's policy to not involuntarily assign an employee to a flexible work assignment that would necessitate geographic relocation. Nothing in this Article, however, precludes management from making a flexible work assignment that requires out-of-town travel consistent with past practice.

Section 35.5. Effect of Flexible Work Assignments on Exchange Program Details.

Performing a flexible work assignment shall not adversely affect an employee's eligibility for Exchange Program details under Article 28 of this Agreement.

Section 35.6. Priority of Work Assignments.

If, in addition to his or her regularly assigned work, employees are expected to perform flexible work assignments and/or carryover or followup work related to a completed flexible work assignment, the employee shall be provided with the name of the management official with authority to determine which assignments have priority in the event of conflict.

Section 35.7. Recognition of Employee Volunteers.

Annual performance appraisals will include recognition that an employee has volunteered for flexible work assignments and, where appropriate, or where required by Section 14.7(e) (Performance Appraisal System) of this Agreement, will provide evaluations of the employee's work outside his or her regularly assigned office. Work assigned pursuant to this Article and the work of the employee's regular

position shall be regarded as of equal importance for the purpose of promotions, monetary awards, and time-off awards.

Section 35.8. Grievability.

Although individual assignments of work made pursuant to this Article are excepted from the grievance and arbitration procedures of Articles 10 and 11, the parties recognize that all other matters otherwise subject to the grievance and arbitration procedures, including the failure to follow the assignment procedures in Section 35.4 above remain subject to the grievance and arbitration procedures.

ARTICLE 36

CHANGES IN EMPLOYMENT CONDITIONS

In the event that the Agency determines to change any condition of employment established by past practice or by administrative circulars or other policy statements, the Agency will notify the Association of the intended change and bargain or consult to the extent required by law.

ARTICLE 37

ORAL ARGUMENT

Section 37.1. It is the policy of the General Counsel to assign oral arguments, promptly after a case is calendared by a Court of Appeals, to the briefing attorney. In making such assignments, the following factors will be considered: the precedential value of the case; the difficulty or importance of the issues involved; whether the interests of the Board would be best served by having a different attorney present at the argument; the attorney's performance on the briefs of that case or at a practice argument; and the Agency's budgetary considerations. If in the judgment of management, an oral argument should not be presented by the briefing attorney, the briefing attorney will be so notified with reasons. To the maximum extent possible, such notification will be given within four (4) business days after notification of the date of the oral argument has been received from the Court. The assignment of arguments in individual cases is within the discretion of management.

Section 37.2. To provide additional opportunities for Appellate Court to present oral arguments, the General Counsel shall maintain a pick-up argument register for overflow enforcement arguments. The assignment of pick-up arguments is within the discretion of management.

Section 37.3. In assigning an *en banc* argument the General Counsel will consider the following factors: the precedential value of the case; the difficulty or importance of the issues involved; whether the interests of the Board would be best served by having a different attorney present at the argument; the attorney's performance on the briefs of that case or at a practice argument; and the Agency's budgetary considerations. If in the judgment of management, an oral argument should not be presented by the briefing attorney, the briefing attorney will be so notified with reasons. The assignment of *en banc* arguments is within the discretion of management.

ARTICLE 38

DURATION AND EFFECT OF THE AGREEMENT

Section 38.1. This Agreement shall remain in full force and effect for three (3) years from the date executed, and from year to year thereafter unless either party shall give to the other party written notice of intention to terminate this Agreement in its entirety no less than sixty (60) calendar days prior to its expiration date, provided that after such notice has been given, the parties may by agreement extend the contract for any agreed-upon period beyond the expiration date.

Section 38.2. In the event that applicable law changes so as to directly affect any provision contained in this Agreement, either party to this Agreement may within forty (40) calendar days of that change request a meeting for the purpose of renegotiating such provisions.

Section 38.3. In the event that legislation is enacted, or regulations or executive orders are issued, which affect conditions of employment of unit employees, nothing in this Agreement shall be construed as a waiver of the parties' bargaining rights where bargaining over the impact of such laws, regulations, or orders would otherwise be required by applicable law.

Section 38.4. The Agency will notify the Association of any decision to reorganize any branch or office in which unit employees are employed, or any planned move to new facilities, and will bargain with respect to the impact and implementation of any such decision to the extent required by law.

APPENDIX

The forms listed below have been included in the Appendix for reference purposes and may be reproduced for use as necessary. Hard copies of these forms may also be obtained by contacting the Labor and Employee Relations Section, Human Resources Branch.

A. Request to Mediate Form (see Article 10, Grievance Procedure/Alternative Dispute Resolution).

B. Employee Consent Form (see Article 12, Adverse Actions and Actions Based Upon Unacceptable Performance).

C. Official Time Report For NLRB Professional Association Representatives (see Article 21, Official Time for Representational Functions).

D. Safety and Health Certification of Home Work Site (see Article 34, Flexiplace).

REQUEST TO MEDIATE

Individuals interested in submitting a dispute to ADR for mediation should refer to Article 10 of the collective-bargaining agreement, then complete Section A of this form and submit it to the ADR Administrator, Room 6800. Within 3 business days, the ADR Administrator will provide a copy of this form to all parties as well as the Professional Association.

Section A. ADR Request

Name:_____ Office:_____

Room:_____ Phone:_____

Issue: _____

☐ Special accommodation requested:_____

Date: _____

After Section A is completed, return entire form to the ADR Administrator, Room 6800

Section B. Confidentiality (*Complete this section prior to mediation*)

All mediation sessions are confidential. The mediator cannot be called as a witness during litigation or in any formal proceeding. All parties are to maintain the confidentiality of ADR, and cooperate in good faith with the terms set forth at the beginning of mediation. Because mediation is a confidential process, any information submitted to the mediator during the mediation is only for settlement purposes. The parties will jointly request that the mediator destroy any notes taken during the mediation session(s).

Name:_____ Name:_____

Signature:_____ Signature:_____

Date:_____ Date:_____

After Section B is completed, return entire form to the ADR Administrator, Room 6800

Section C. Termination of ADR

Mediation is voluntary and can be terminated at any time during the process, unless the issue is subject to mandatory ADR pursuant to the bargaining agreement. Upon termination of ADR, the dispute will be subject to the provisions of Article 10.

I hereby terminate participation in voluntary ADR:

Name:_____

Signature:_____

Date:_____

After Section C is completed, return entire form to the ADR Administrator, Room 6800

Section D. Settlement

This is to certify that the parties have agreed to a settlement through mediation. A copy of the settlement has been provided to all parties, as well as the Professional Association, and a copy is also attached to this form. All resolutions resulting from mediation are binding and no agreement reached will conflict with any law or regulation, or violate any provision of the bargaining agreement unless the Association expressly waives its contractual rights.

Name:_____ Name:_____

Signature:_____ Signature:_____

Date:_____ Date:_____

Return entire form and settlement agreement to the ADR Administrator, Room 6800. Please complete an evaluation form at the end of mediation and return to Room 6800.

EMPLOYEE CONSENT FORM

Pursuant to Article 12 of the NLRB Professional Association collective-bargaining agreement, I hereby certify that I have been advised of my right to be represented by the Association, an attorney, or other representative in connection with this adverse action and I authorize the following actions be taken on my behalf:

☐ Provide notice of this adverse action proposal/decision to the NLRBPA Grievance Chairperson, but not a copy.

☐ Provide a copy of this adverse action proposal/decision to the NLRBPA Grievance Chairperson.

☐ Provide a copy of this adverse action proposal/decision to the following representative(s):

_____

_____

☐ Do not provide notice or copies of this adverse action proposal/decision to any representative or third party.

Signed: _____

Date: _____

THIS CONSENT FORM MUST BE SIGNED, DATED, AND RETURNED TO THE LABOR AND EMPLOYEE RELATIONS SECTION, SUITE 6800, WITHIN 5 BUSINESS DAYS. INFORMATION WILL THEN BE PROVIDED TO THE SPECIFIED PARTY WITHIN 1 BUSINESS DAY. NO INFORMATION WILL BE SHARED WITHOUT CONSENT.

OFFICIAL TIME REPORT FOR NLRB PROFESSIONAL ASSOCIATION REPRESENTATIVES

_____
Month/Year Reported

_____ _____
Employee Name *Organizational Unit*

_____ _____
Position with Union *Name of Supervisor*

1. ON-GOING LABOR-MANAGEMENT RELATIONSHIP

Official time taken for meetings and consultations with Management in connection with all labor-management committees, including partnerships, FLRA and MSPB proceedings, walk-around time for OSHA inspections, and *Weingarten*-type meetings under 5 U.S.C. § 7114(a)(2)(A) and (B). Official time taken in connection with the matters including time spent in meetings and consultations with Management related to labor-management relations (*e.g.*, preparations and follow-up activities). Training in labor relations for NLRBPA Representatives.

Number of days and/or hours_____

2. GRIEVANCES AND APPEALS

Official time taken for representation activities in connection with meetings and consultations with Management related to discussions of grievances, operation of the ADR procedures, arbitrations, adverse actions, EEO complaints, and other complaints and appellate processes, including time spent in meetings and consultations with Management related to grievances and appeals (*e.g.*, preparations and follow-up activities).

Number of days and/or hours_____

3. NEGOTIATIONS

Official time spent in negotiations concerning a successor to the collective-bargaining agreement, negotiations pursuant to a contractual reopener provision, or negotiations occurring during the term of the Agreement. This includes time spent with FMCS and FSIP. Official time spent in connection with preparations or follow-up activities related to the negotiations.

Number of days and/or hours_____

4. OTHER REPRESENTATIONAL ACTIVITIES:

Number of days and/or hours_____

TOTAL NUMBER OF HOURS_____

_____ _____
Signature *Date*

DISTRIBUTION: Original to Immediate Supervisor.

NATIONAL LABOR RELATIONS BOARD

SAFETY AND HEALTH CERTIFICATION OF HOME WORKSITE

FOR

WORK-AT-HOME PARTICIPANTS

Name:_____

Organization:_____

The undersigned states that I have work space in my home which I will utilize to perform Agency work under the work-at-home program provided in the NLRB Professional Association collective-bargaining agreement and I hereby certify that such work space is free from recognized hazards that have a potential to cause injury or illness.

Date:_____ _____

(Employee's Signature)