

November 2010

Collective Bargaining Agreement

United States Department of Agriculture
Agricultural Research Services
Beltsville Agricultural Research Center

And

American Federation of Government Employees
AFL-CIO
Local #3147

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ARTICLE I RECOGNITION

Section 1

This agreement is made and entered into by and between the Beltsville Agricultural Research Center, (BARC), Beltsville Area (US National Arboretum (USNA), Glenn Dale and Beltsville), Agricultural Research Service (ARS), United States Department of Agriculture (USDA); herein after referred to as the "Center" or "Management" and the American Federation of Government Employees (AFGE), Local 314 7; hereinafter referred to as the "Union" or "Bargaining Unit," and collectively known as the "Parties."

Section 2

Management hereby recognizes the Union under the provisions of Title VII as the sole and exclusive representative for all employees in the Bargaining Unit which is defined as follows:

The Representation Unit to which this Agreement applies includes all wage grade and general schedule employees of the BARC and USNA, ARS, REE, USDA, excluding confidential employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, professionals and supervisors.

Section 3

Management and Union agree that the terms and conditions of this Agreement apply to all employees in the Bargaining Unit.

ARTICLE II CONTROLLING AUTHORITY

In the administration of all matters covered by this Agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities including policies set forth in Title S, Code of Federal Regulation; any Federal law or any Government-wide rule or regulation; by published agency policies and regulations in existence at the time this Agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level.

ARTICLE III RIGHTS AND RESPONSIBILITIES OF THE CENTER

Section 1

Management officials of the agency retain the right, in accordance with 5 U.S.C. 7106, to determine the mission, budget, organization, number of employees and internal security practices of the agency; and in accordance with applicable laws to:

- A. 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. assign work, to make determinations with respect to contracting out and to determine the personnel by which agency operations shall be conducted;
- C. make selections for appointments with respect to filling positions from among properly ranked and certified candidates for promotion, or other appropriate sources; and
- D. take whatever actions may be necessary to carry out the Agency's mission during emergencies.

Section 2

Management officials and supervisors retain the right to meet with Unit employees and without the presence of a Union representative concerning any matter that is not a condition of employment, as stated in 5 U.S.C. 7114 (a) (2).

Section 3

When the Center and the employee are making arrangements for the employee's oral reply to the Center's proposal to take adverse or disciplinary action, the Center will permit a reasonable delay to allow the employee's designated representative to be in a duty status (one workday) during the oral reply.

Section 4

The requirements of this Article shall apply to all supplemental agreements between the Parties.

ARTICLE IV EMPLOYEE RIGHTS

Section 1

As provided by 5 U.S.C. Section 7102, "Each employee shall have the right to form, join, or assist any labor organization, or to refrain from such activity, freely and without fear of penalty or reprisal. Each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right:

- a. to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to the heads of agencies and other officials of the Executive Branch of the 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 this chapter."

Section 2

As provided by 5 U.S.C. Section 7116(c)(2), nothing in this Section shall preclude the labor organization "from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter."

Section 3

As provided by 5 U.S.C. 7114(a)(2): "An exclusive representative of an appropriate Unit in an Agency shall be given the opportunity to be represented at –

- a. any formal discussions between one or more representatives of the Agency and one or more employees in the Unit, or their representatives concerning grievances or personnel policy or practices or other general conditions of employment, or;
- b. any examination of an employee in the Unit by a representative of the Agency in connection with an investigation if:

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

(2). the employee requests representation."

The employee will be given sufficient advanced notice prior to being interviewed in order to obtain Union representation.

Section 4

If the employee is to be served with a warrant or subpoena, where possible, it will be done in private without the knowledge of other employees.

Section 5

In dealings between Management and Bargaining Unit employees, both Parties shall treat each other with dignity and respect. For example, there should be no verbal abuse. In addition, employees will be dealt with in a fair and equitable manner. When Management wishes to discuss matters of misconduct or of a sensitive nature with an employee, it should be done in private, away from other employees. In accordance with this Agreement, the employee shall have the right to exercise the option to request a Union representative.

Section 6

Employees shall not be subjected to prohibited personnel practices as defined in Title 5 U.S.C. 2302.

Section 7

Employee participation in charitable drives and U.S. Savings Bond campaigns is voluntary.

Employees shall not be required to attend briefings where such participation is discussed. No solicitations (other than those approved by the Agency) may be made, and no pressure shall be brought to bear to require such participation.

Section 8

The Agency's nepotism policies shall be uniformly administered throughout the Bargaining Unit. Where nepotism conflicts occur, which involve Bargaining Unit employees, the Agency will take appropriate action to resolve the conflict.

Section 9

The Employer shall not take or fail to take personnel action with respect to the employee as a reprisal for the exercise of appeal rights granted by law, rule, regulations or the terms of this Agreement.

Section 10

Employees covered by this Agreement shall have the full protection of all rights to which they are entitled by the Constitution of the United States.

Section 11

Employees will be allowed to use personal radios when the use of such does not adversely affect the employees' performance and/or the work environment of others. Televisions and microwaves will be permitted in designated lunch/break areas, provided they are initially approved by Management with jurisdiction over the area in question, they are installed safely and conform to all safety regulations, and the use of such does not adversely affect the employees' performance and/or the work environment of others. All personal appliances shall conform to safety regulations. It shall be the employee's responsibility to ensure compliance.

Section 12

In the performance of his/her duties, or when acting within the scope of their employment, the employee is entitled to all protection of the Federal Employees Liabilities Reform and Tort Compensation Act of 1988, (P.L. 100-694).

Section 13

Meetings away from the facility, scheduled by the Employer, and attended by Bargaining Unit employees, shall entitle those employees to official time, travel and per diem allowances, if applicable.

ARTICLE V UNION REPRESENTATION

Section 1

In addition to the officers, stewards and business agent(s) of Local 3147 AFGE, the Center agrees to recognize the national and district officers of the American Federation of Government Employees. Union national and district representatives will be provided access to the Beltsville Area for representational duties, in accordance with rules and regulations pertaining to all non-Beltsville Area employees.

Section 2

The Union shall provide the Beltsville Area Director with a list of designated stewards in the Beltsville Area. These designated stewards shall be recognized as employee representatives for Bargaining Unit employees, and shall be entitled to the use of official time, subject to the approval of Management, under the provisions of this agreement.

Section 3

Union representatives will be allowed a reasonable amount of time for representational functions. Official time is authorized for and Union representatives shall identify the purpose of their request as one of the following:

1. Attend formal discussions between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment;
2. Attend an examination of a bargaining unit employee by a representative of the Agency in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests representation;
3. meeting with management representatives, except when exempted by an appropriate management official;
4. meeting with employees to resolve complaints and grievances;
5. attending grievance meetings with managers and employees;
6. attending a meeting with a Federal Labor Relations Authority field agent or attorney pursuant to an unfair labor practice charge or complaint;
7. serving as a witness at an arbitration related to this Agreement, an unfair labor practice charge or complaint;
8. participating as the representative of the Union at an arbitration, unfair labor practice hearing or impasse proceeding related to the AFGE Local 314 7 unit;
9. attending authorized labor-management relations meetings; or

10. other representational functions permitted by law.

Section 4

Each Union representative shall notify his/her immediate supervisor when there is a need to perform representation business under Section 3 of this Article. Supervisors shall make a steward available for such business within a reasonable time. A steward entering a work area that is not his own will report to the supervisor in charge upon arrival and departure. The steward shall also notify their immediate supervisor upon their return to their own work site.

Request for Official Union Time

Union Officials' Names: _____
 Phone Number: _____
 Dates for Official Time: _____
 Estimated Start Time: _____
 Estimated End Time: _____
 Location of Union Activity: _____

Purpose of Union Duties:

- Attend formal discussions between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment
- Attend an examination of a bargaining unit employee by a representative of the Agency in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests representation.
- Meet with management representatives
- Meet with employees to resolve complaints and grievances.
- Attend grievance meetings with managers and employees.
- Attend meeting with the Federal Labor Relations Authority field agent or attorney pursuant to an unfair labor practice charge or complaint.
- Serve as a witness at an arbitration related to the collective bargaining agreement, an unfair labor practice charge or complaint.
- Participate as a representative of the Union at an arbitration, unfair labor practice hearing or impasse proceeding relating to the AFGE Local 3147 unit.
- Attend authorized labor-management relations meetings.
- Other representational functions permitted by law. Generally describe:

TC Code
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35/36/37/38
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35/36/37/38

Approved: _____ Denied: _____

Reason for denial and if applicable, specify when the Union official will be released:

Supervisor Signature: _____ Date: _____

Section 5

Except in cases of an emergency, management agrees to consult with the Union prior to transferring President and Chief Shop Steward from their tour of duty.

Section 6

The Union may make reasonable and necessary requests for information from the Center that is not for "Official Use Only" or that is not otherwise available. If the information requires duplication, the Union will not be billed. Section shall not apply to requests for information under the Freedom of Information Acts.

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Section 7

The Center will provide the Union a Position Organization Chart semiannually. The Union will be notified monthly of Bargaining Unit members being terminated.

Section 8

The Center will allow each Union representative official time during each year of this agreement to attend training of mutual interest to the Union and the Center. Total hours allowed for this training will not exceed eighty (80) hours per representative each year. The Union will recommend the unit employees who will attend these training sessions. Normally, this will not exceed three (3) Union representatives per year. If additional time is needed, Management and Union will consult.

Section 9

The Union has a right to be represented at discussions between Management and employees (or employee representatives) concerning individual employee grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the Unit. If any discussions involve decisions on personnel policies, or other matters which the Center is obligated to discuss or negotiate with the Union, management will maintain status quo until the matter is resolved to the extent required by law or regulation.

**ARTICLE VI
LABOR-MANAGEMENT RELATIONS COMMITTEE (LMRC)**

Section 1

At the Union's or Management's request, a joint Labor-Management Committee will be established. The Committee will include not more than two (2) employees appointed by each Party. Each Party will notify the other in writing of the members who are appointed to the committee and of any subsequent changes.

Section 2

The Labor-Management Relations Committee shall have as its purpose, and shall give consideration to such matters as the interpretation and application of this Agreement; the interpretation and applicability of rules, regulations, and policies; the correction of conditions causing grievances and misunderstandings; the encouragement of good human relations in employer-employee relationships; the promotion of job-related education and training; the improvement of working conditions including safety matters; and the strengthening of morale, etc. It is agreed that individual employee grievances will not be considered at such meetings; however, the Committee shall not be limited to the above-listed matters.

Section 3

The Labor-Management Relations Committee will meet biweekly or more often if need arises. Meetings will be conducted during normal business hours. If otherwise in a duty status, Union representatives will be on official time.

Section 4

The Union may appoint one (1) qualified Unit employee to represent the Union on each current or newly established committee that affects Unit employees and does not involve the budget, mission, organization or internal management. If otherwise in a duty status, Union appointed employees in the Bargaining Unit who serve on committees will be on official time.

ARTICLE VII NEGOTIATIONS AND DISCUSSIONS

Section 1

As provided by 5 U.S.C. 7106(b), "Nothing in this Section shall preclude agency or labor organization from negotiating:

- a. at the election of the Agency, on the numbers, types and grades of employees or positions assigned to organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
- b. procedures which Management officials of the agency will observe in exercising authority under this Section; or
- c. appropriate arrangements for employees adversely affected by the exercise of authority under this Section by such Management officials."

Section 2

Local 3147 will be advised of new, or proposed changes to established personnel policies and practices, or other matters affecting working conditions of employees in the Unit that are not enumerated in or in conflict with provisions of this Agreement.

- a. Except in cases of emergency, the Union will be advised of new or proposed changes to established personnel policies and practices at least 10 working days in advance of implementation.
- b. The Union will be given the opportunity to discuss the proposal with Management during duty hours and/or official time and may make written or oral comments, suggestions or alternative proposals.
- c. Management will give serious, good-faith consideration to views or proposals raised by the Union prior to making a decision with respect to the implementation of the proposal.

Section 3

To implement the procedures described under Section 2 of this Article, the Parties shall establish a committee composed of not more than two (2) members appointed by each Party. The committee shall meet at the request of either Party (upon at least fifteen (15) workdays' notice, unless otherwise mutually agreed) when verbal discussion is desired. The Center's representatives on the committee shall report the outcome of meetings to the Area Director. Each Party shall notify the other in writing of the two (2) members appointed to the committee. Changes shall also be in writing. In addition, either Party or both may designate a participating observer to a committee meeting. A written summary of the matters discussed and agreed to at these meetings will be prepared by the Center within ten (10) workdays of the date of the meetings; such summary will be furnished to the Union. The summary will be deemed satisfactory, unless either party notifies the other of suggested changes within fifteen (15) workdays of receipt. If the changes are not mutually agreed upon, they shall be attached to the summary as an addendum.

Section 4

Discussion under this Article shall be between the Area Director and Union President (or their designees, including the committee established under Section 3). In any case, however, formal requests for meetings shall be initiated only by the Area Director, and the Union President, or those acting in such capacities.

Section 5

In addition to the discussions under Section 2 and 3 of this Article, the committee shall meet at the request of either party to consider matters of mutual concern, excluding grievances. Requests of such meetings shall be made in accordance with Section 4 of this Article and shall be held upon at least fifteen (15) workdays' notice unless otherwise mutually agreed.

Section 6

Where higher level personnel policies and practices can be identified as applying specifically to a group within the unit, as opposed to having impact beyond the installation level, the Center agrees to meet and confer on impact and implementation of the policies to the proper authority (within

fifteen (15) workdays or receipt) the notice that the Union desires to meet and confer on matters beyond the authority of the Area Director.

Section 7

If changes in law or regulation render provisions of the Agreement inoperative, the Parties shall meet at a mutually agreeable time (within ninety (90) days) at the request of either Party, to renegotiate the affected provisions of the Agreement. Such negotiations shall be limited to those provisions rendered inoperative and shall not include other matters.

ARTICLE VIII COOPERATIVE RESOLUTION PROGRAM

Employees who wish to use the Cooperative Resolution Program have the right to use the program. If the issue is not resolved, the time frames for filing a negotiated grievance shall not start until all efforts in mediation have been exercised.

The mediation process shall be completed within fifteen (15) workdays. Time may be extended by mutual agreements. At the end of this time either party may proceed with established procedures, if no resolution is reached.

ARTICLE IX EQUAL EMPLOYMENT OPPORTUNITY (EEO)

Section 1

It is agreed between the Parties to cooperate in providing equal opportunity and prevent discrimination against any employee based on age, sex, race, religion, color, national origin or disability.

Section 2

Employees shall be provided a current telephone list of the USDA counseling program and information on the EEO complaint system and counselor duties. The Employer shall post information on the EEO Counseling program in a location at each area covered by this agreement, in an area frequented by employees.

Section 3

Employees will be encouraged to participate in EEO related special events and functions.

Section 4

The Employer shall continue to conduct training and provide information on EEO and sexual harassment policies.

ARTICLE X

REASONABLE ACCOMMODATION FOR EMPLOYEES WITH DISABILITIES

Section 1

The Agency is committed to affirmative action for the employment, placement, and advancement of qualified individuals with disabilities and disabled veterans.

The Agency will offer reasonable accommodation to the known physical or mental limitations of qualified individuals with a disability regardless of the type of appointment, unless the Agency can demonstrate that the accommodation would impose an undue hardship on the operation of the Agency.

The Parties recognize that individual accommodation will be determined on a case-by-case basis, taking into consideration the employee's specific disability, existing limitations, the work environment and any undue hardship imposed on the operation of the Agencies' program as defined above. Qualified employees with disabilities may request specific accommodations.

Both Parties recognize that reasonable accommodation means an adjustment made to a job and/or the work environment that enables a qualified person with a disability to perform the duties of that position. The Agency will eliminate undue delay in considering requests for reasonable accommodations for employees with disabilities. Such accommodations are to be considered as exceptions to the general restrictions; and will be evaluated on a case-by-case basis with regard to the merit of the request.

Should a non-probationary employee become unable to perform the essential functions of his/her job, even with reasonable accommodation due to a disability, the Agency will seek to reassign the employee when a funded vacant position is available and the other conditions in 29 CFR 1614.203(g) are met.

For employees with disabilities, job restructuring is one of the principal means by which some qualified workers with disabilities can be accommodated. The principal steps in restructuring jobs are:

- A. Identify which factor, if any, makes a job incompatible with a worker's disability.
- B. If a barrier is identified in a non-essential job function, it may be eliminated so that the capabilities of the person may be used to the best advantage.
- C. Job restructuring does not alter the essential functions of the job; rather, any changes made are those which enable the person with a disability to perform those functions.

Both Parties agree that in many cases, changes in the work environment enable persons with disabilities to more effectively perform their job duties. Alterations may be, but are not limited to:

- a. Rearranging files or shelves;
- b. Widening access areas;
- c. Maintaining hazard-free pathways;
- d. Raising or lowering equipment;

- e. Moving equipment controls from one side or the other, or modifying them for hand or foot operation; or
- f. Installing special holding devices on desks, benches, chairs or machines.

With respect to the modernized system's environment, examples of accommodations are:

- A. The surface that holds the terminal will be adjusted to a level suitable to the employee's needs.
- B. The keyboard will have "light touch". Guards and other adaptive devices will be considered.
- C. Visually impaired employees will be permitted to label "home" keys.
- D. Operational and training materials will be available in Braille.
- E. Lap trays will be considered.
- F. Computer - based, voice-output systems or VDT screen enlargers will be provided for visually-impaired employees.
- G. Hardware and software will be configured to accommodate color blindness (blinking cursor, highlighting).
- H. Printer switches will be available in "light touch" and located in an easily accessible location.

An employee may be provided an assistance device, if the Agency determines that the use of the equipment is necessary to perform official duties. Such equipment does not cover personal items which the employee would be expected to provide, such as hearing aids, eyeglasses or prosthetic devices.

Section 2

The Agency will be liberal in granting leave to accommodate the disabling condition of employees. For example, the Agency will advise employees that:

- A. Leave without pay may be granted for illness or disability.
- B. Sick leave can be appropriately used by a disabled individual (who uses prosthetic devices, wheelchair, crutches, guide dog or medical treatment).

Section 3

The Agency will provide disabled employees full consideration for all training opportunities. Once an employee is selected for training, the Agency will provide reasonable accommodation to the employee to attend and complete training.

Section 4

It is the intent of the Agency to provide on-the-job training opportunities to qualified disabled employees consistent with operational needs.

Section 5

For the purpose of continuing to provide reasonable accommodations for hearing-impaired employees, management agrees to provide interpreter services for those employees who seek Union assistance and/or representation on their individual concerns. To the extent possible, this should be arranged in advance, unless the employee wants to retain confidentiality.

Section 6

To provide employees with disabilities equal opportunity to perform official business travel, certain additional travel expenses necessarily incurred to accommodate the employee's disability may be reimbursed under the Federal Travel Regulations.

On a case-by-case basis, an employee with a disability may request flexiplace or work-at-home as a form of reasonable accommodation.

ARTICLE XI EMPLOYEE ASSISTANCE PROGRAM

Section 1

The Parties jointly affirm their support for the Employee Assistance Program (EAP) which is available to Bargaining Unit Employees who have alcohol, substance abuse, or other problems, in the workplace or otherwise, which adversely impact on performance or conduct.

Section 2

Unit employees with alcohol, substance abuse or other problems may be advised of the existence of the EAP, and will be provided appropriate opportunities to participate. It is recognized that counseling under this program is voluntary and confidential in nature and that the primary concern of both parties is conduct and performance.

Section 3

Information on EAP will be posted on employee bulletin boards. Management will provide information to employees about EAP upon request.

Section 4

The EAP is available and may be contacted periodically to give informational presentations at all hands meetings or Management Unit staff meetings.

ARTICLE XII MERIT PROMOTION

Section 1. General Provision

- a. The principle of merit provisions is to ensure that employees are given full and fair consideration for advancement and to ensure that selection from among the best-qualified candidates is made.

- b. Positions in the Bargaining Unit will be filled on the basis of merit and in accordance with 5 CFR 335 and applicable laws, rules, regulations and this Agreement.

Section 2. Vacancy Announcements

1. Written notification will be made to the Union not less than five (5) workdays prior to the release of the vacancy announcement.

2. Announcements for Bargaining Unit positions shall be open for a minimum of ten (10) work days. Announcements will be posted electronically by the opening date. All vacancy announcements will contain the following information:

(1) announcement number with opening and closing date;

(2) area of consideration;

(3) title, series, grade, and number of vacancies to be filled;

(4) geographic location of vacancy(ies);

(5) summary of the duties of the vacancy(ies);

(6) knowledge, skills and abilities (KSAs), if applicable;

(7) selective placement factor(s), if applicable;

(8) known promotion potential, if any;

(9) instructions for applying to include the name and phone number of the contact person for any information concerning the vacancy announcement or to obtain a copy of the position description.

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

(11) a statement that the principles of equal employment opportunity will be adhered to in all phases of the selection process.

(12) A statement of time-in-grade requirements.

3. Supervisors will be responsible for notifying employees about announced vacancies. Employees who wish to be considered for vacancies will be given contact information for the Human Resources Division (HRD) in order to submit their applications. Applications will be considered timely if received in the HRD in accordance with the vacancy announcement instructions.

4. Employees will be responsible for filing a completed application in accordance with the vacancy announcement instructions. However, if the requirement exists for an employee to provide the

most recent performance rating and/or a supervisory evaluation with the application and the employee does not have the required documentation, the employee will include a statement with his or her application that the documentation has been requested from the supervisor. (Reference Article XIV, Section 5)

Section 3. Evaluation Criteria

1. Selective placement factors may be used in determining eligibility if they are essential and not merely desirable to successful performance in the position being filled. The inclusion of such factors must be supported by the position description. Applications will contain a statement describing how the applicant meets the selective placement factor(s) together with any KSAs required for the position, if applicable.
2. The Office of Personnel Management Qualifications Standards Handbook, along with the knowledge, skills, and abilities and any selective placement factors described in the vacancy announcement will provide the basis for determining quality candidates.
3. The servicing HR specialist in consultation with the selecting official will develop the ARS Recruitment and Justification Form prior to announcing the vacant position. This form identifies:
 - a. minimum qualification requirements to include specialized experience in terms of knowledge, skills, and/or abilities that are directly related to the duties and responsibilities of the position to be filled;
 - b. any selective placement factors;
 - c. specific examples of acceptable experience and/or education, if applicable, that evidences the possession of each knowledge, skill, ability, and/or selective placement factor identified; and
 - d. a quality experience definition that describes specific job related experience that is considered above minimum qualifications requirements and has equipped the candidate with the ability to perform the duties and responsibilities of the position.

Section 4. Evaluating Candidates

1. The servicing HR specialist will evaluate all applicants to determine basic eligibility and assign them to the appropriate group: Eligible or Quality. Servicing HR specialists may obtain assistance from a subject matter expert other than the selecting official to determine candidates' appropriate group.
 - a. Eligible Group: candidates who meet minimum qualification requirements and any selective placement factors established for the position.
 - b. Quality Group: All eligible group candidates who also possess additional education, if applicable, or experience as follows:

- i. specific, job-related work experience that is clearly above minimum qualification requirements and any selective placement factor(s) that has equipped the candidate with superior ability to perform the duties of the position; or
- ii. superior or higher performance rating that is directly related to the position being filled; or
- iii. specific, job-related education (i.e., BA, MS, PhD.) that is identified in the Office of Personnel Management Qualifications Standards Handbook for the position being filled as a positive-education requirement which the applicant must possess in order to meet basic eligibility; or
- iv. successful completion of a trade or vocational school program typically related to the position.

Section 5. Referral and Selection

1. All competitive candidates who meet the quality group criteria requirements will be referred to the selecting official on the Certificate of Eligibles in alphabetical order. If there are not enough (less than three) candidates for a best qualified or quality grouping, all candidates in both the eligible and quality groupings will be referred. Noncompetitive candidates will be referred separately.

2. Upon receipt of the Certificate of Eligibles, selecting officials, in consultation with their servicing HR specialist, will determine the best method for making a selection. Selecting Officials may consider awards and recognition when reviewing applications. Telephonic or live interviews may be conducted.

3. The selecting official will comply with all applicable laws, rules and regulations and this Agreement. The selecting official must consider candidates for the vacancy(ies) being filled according to the following order of precedence:

- a. Quality CTAP applicants.
- b. Former Department employees who are on the Department's priority reemployment or repromotion list; and
- c. Best qualified or quality applicants from all other sources.

4. The selecting official is not required to fill a vacancy by selection of one of the candidates listed on the promotion certificate. He or she may:

- a. request extension of the area of consideration;
- b. request additional recruitment efforts; and/or
- c. fill the job by some other type of placement action (e.g., reassignment).

5. Bargaining Unit employees covered by this Agreement will be notified of their selection within ten (10) days if the selection results in a promotion and within two (2) pay periods if not a promotion.

Section 6. Union Representation

A Union Representative may attend the interview panel as an observer for all merit promotion panel actions involving Bargaining Unit employees. The Selecting Official will notify the Union when the panel will be convened. The Union representative will have the same access to the documentation as the panel members, and the same confidentiality restraints will apply.

Section 7. Documentation

In accordance with 5 CFR 335, and ensuring that individual rights to privacy are protected, the HRD shall keep a copy of the complete merit promotion file for a period of two (2) years.

Section 8. Applicant Notification

1. All bargaining unit employees will be notified in writing of their non-selection for all positions for which the employee applied. Upon written request, the following will be provided by the HR.D within ten (10) working days

- a Basic qualification determination;
- b. The grouping in which the candidate was placed (i.e., eligible or Quality)
- c. If candidate was referred or not referred; and
- d. Name of individual selected.

2. Pursuant to 5 USC 7114, the Union is entitled to request information pertaining to the merit promotion process of any bargaining unit position filled by the Agency covered by this Agreement.

Section 9. Grievances

In accordance with Article XXXI, Negotiated Grievance Procedures, a grievance may be filed by the employee or Union when it is believed that a violation of applicable Merit Promotion Jaw, rule, regulation, or the provisions of this Agreement has occurred.

Section 10. Noncompetitive Promotion

1. If an employee was ever the same grade as the position being filled, or held a higher grade, or was selected for a position with the same promotion potential, that person may be noncompetitively promoted. The employee must have been selected from an OPM, delegated examining, or a USDA Demonstration Project certificate or under competitive merit promotion procedures.

2. When the HRD determines that there has been an accretion of duties and responsibilities that warrants an increase in grade, the employee and supervisor will be notified.

ARTICLE XIII CAREER LADDER PROMOTIONS

Section 1

An employee in a career ladder may be promoted no earlier than the first full pay period after all of the following requirements are met:

- a. The employee becomes eligible to be promoted after one (1) year in a grade or whatever period satisfies basic eligibility requirements;
- b. The employee demonstrates the potential for satisfactory performance at the next higher level. In this regard, the supervisor must make this determination prior to the date the employee is eligible to be promoted;
- c. The employee's current performance appraisal record must have an overall summary rating of "fully successful" or better; and
- d. All other requirements of Law and regulation are met.

Section 2

Supervisors shall review the work of each employee in a career ladder position who will be eligible for a career ladder promotion prior to the employee's eligibility date. Employees who do not meet the requirements for promotion, in accordance with Section I of this article, may request from the supervisor an explanation for the reason the promotion did not occur.

Management will explain the specific performance element area where the employee is lacking and advise the employee as to what he/she must do to meet the requirements for promotion.

Section 3

Once an employee's performance improves to the required level as described in Section I of this article, the supervisor will recommend the employee for promotion.

ARTICLE XIV PERFORMANCE APPRAISAL

Employees in the Bargaining Unit will be evaluated on an annual basis under the current Agency Performance Appraisal System. Each employee will be informed of the performance standards and critical elements of the employees' position. Performance standards and critical elements shall be in accordance with EEO guidelines and OPM prescribing directives. Performance standards will be applied in a fair and equitable manner. The Parties acknowledge that Agency Policy and

Procedure 418.3, dated May 21, 1992, establishes the ARS Performance Appraisal System. All provisions of the directive apply to the Bargaining Unit.

Supporting Information:

In no case may the decision to take action be based on matters not stated in the proposed notice. Any action to reduce in grade or remove an employee must be supported by substantial evidence.

Section 1

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

Performance plans including elements and standards shall be based on the requirements of the position description.

Section 2 – Definitions

A critical element is a component of an employee's job that is of sufficient importance that performance below the "meets fully successful" level would result in an unacceptable performance in the employee's position.

A noncritical element is a component of an employee's job that is of such importance as to require measurement but which is not critical.

Performance standard is the expressed measure of a level of achievement for an element established by the Employer for the duties and based on the responsibilities of the position description.

A performance plan is the aggregation of all of an employee's written critical and noncritical elements and performance standards.

An appraisal is the act or process of reviewing and evaluating the performance of an employee against the described performance standards on an AD Fonn-435, Performance Appraisal.

Appraisal rating period annual period in which performance is assessed.

Mid-Year review is a review of the employee's progress toward achieving the performance standards which is not a rating. The content of the progress review is grievable.

Performance Improvement Plan (PIP) is a written notice informing an employee of performance deficiencies and of the action(s) to be taken by the employee to improve performance.

Summary rating is a consolidated score of the individual performance rating for each critical and noncritical element.

Annual rating/rating of record is a written record of the overall performance rating which reflects the summary rating. Annual ratings are pre-scheduled ratings of record and are generally conducted once a year.

Section 3

Pursuant to 5 U.S.C. 4302, performance standards must, to the maximum extent feasible, permit the accurate evaluation of a job performance on the basis of objective criteria related to the positions in question. Performance standards will be written in a common format.

Performance standards are expressed measures that management expects to be achieved for each position element. The standards for all elements shall be defined at the fully successful level. The standards shall be specific, observable and measurable descriptions in terms of either quantity, quality, timeliness and manner of performance, to provide a clear means of assessing at which level performance and elements have been accomplished. Performance standards are developed in accordance with an employee's job/position description.

When developing performance plans, the Employer will encourage the input of employees who occupy such positions before implementing such performance plans. Employees shall be provided a minimum of five (5) workdays to submit comments.

Performance plans shall be established and communicated to the employee in writing, no later than thirty (30) days after the beginning of the appraisal period. At the time the plan is provided to the employee, the supervisor and employee shall discuss the plan and its elements in an attempt to avoid any subsequent misunderstandings about the expected performance.

An employee may request that his/her standards or elements be reconsidered in light of his/her comments, or if the employee's duties have been sufficiently changed.

Employees permanently assigned to new positions, or work Units with different elements and standards, will be issued a performance plan no later than thirty (30) days of entering the new position.

Employees on details expected to exceed one-hundred and twenty (120) days or more will receive a written evaluation of their performance accomplishments upon the completion of detail.

Section 4

There will be three (3) levels for assessing each element. Each element will be rated either "exceeds fully successfully," "meets fully successfully," or "does not meet fully successful". Each element will be rated using one of these levels and must be based on employee performance.

When the summary rating is superior or fully successful on form AD - 435, the write-up in the accomplishments block for each element is optional.

Elements rated "does not meet fully successful" and summary ratings of "outstanding" must be supported with narrative documentation and may include other evidence.

Supervisors are strongly encouraged to provide a write-up of not more than one page which provides an overall assessment of the employee's capabilities, as indicated by his/her performance during the rating year. Likewise, employees are strongly encouraged to submit a statement of accomplishments of not more than one page. Both the supervisory assessment and the employee statement of accomplishments, if completed, will be included with the appraisal package.

The minimum period upon which a rating should be based is ninety (90) calendar days of continuous service in a permanent position under the same performance standards. However, if at the end of the rating period, a Bargaining Unit employee has not served ninety (90) days in the same position, under the same performance standards and elements, and under the same supervisor, the appraisal may be deferred until these conditions are met.

Employees will receive a departure/interim appraisal when they have served on a performance plan for at least ninety (90) days and the employee/supervisor relationship changes.

- A. The departure/interim appraisal will be issued within thirty (30) days of the change.
- B. The departure/interim appraisal will be a summary rating which may be supported by a brief supervisory narrative not to exceed one page which provides an overall assessment of the employee's performance.
- C. Departure/interim appraisals will be forwarded to the employee's new supervisor and will be considered in arriving at the employee's annual rating of record. A copy of any departure/interim appraisal prepared will be given to the employee.
- D. Departure/interim appraisals will not be prepared by the permanent supervisor for the employees detailed.

For employees detailed for one-hundred and twenty (120) days or less, supervisors are encouraged to provide a write-up of no more than one (1) page on the employees' performance under the detail, if requested by the employee.

Annual ratings will be documented in a common format.

An employee's summary performance rating, shall use one of the following five levels:

- a. Unacceptable
- b. Marginal
- c. Fully Successful
- d. Superior
- e. Outstanding

Official time spent, performing Union representational functions will not be considered a negative factor when evaluating critical or noncritical elements.

Section 5

When an employee is given an appraisal, he/she will receive a photocopy of his rating no later than one workday after he/she is presented the rating.

Section 6

Informal discussions, including review of performance to determine progress and problems are a normal part of supervision and should occur throughout the appraisal period.

Progress reviews provide the opportunity to identify and resolve problems in the employee's performance.

- a. A progress review must be conducted whenever the employee reaches the approximate midpoint between the date the employee's performance plan was issued and the end of the appraisal period, unless the length of this period is less than ninety (90) days.
- b. Additional progress reviews may be conducted.
- c. Progress reviews will summarize the employee's performance in comparison to each critical and noncritical element of the performance plan. Remedial actions may be identified, as appropriate.
- d. The employee will be asked to initial and date the progress review.

ARTICLE XV SAFETY AND HEALTH

Section 1

Consistent with applicable law,, Executive Order 12196, Occupational, Safety, Health Administration requirements, as well as other applicable health and safety codes, the Employer will support the maintenance of safe and healthful working conditions for all employees. If an appropriate authority determines there is a significant health or safety problem and the Department

does not take timely action on the problem, the Employer, to the extent of its authority, will provide an appropriate remedy to address the needs of employees. The Employer and the Union will cooperate to that end and will encourage employees to work in a safe manner.

Pursuant to applicable law and regulation, no employee shall be subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthful working condition, or other participation in Agency occupational safety and health program activities, or because of the exercise by such employee on their own behalf or another's behalf of any right afforded by Section 19 of the Occupational Safety and Health Act, Executive Order 12196, or 29 CFR 1960. These rights include among others, the right of an employee to decline to perform their assigned task because of a reasonable belief that under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting.

Section 2

The Employer will work with all persons, entities, or organizations which own and/or control the work space to which Bargaining Unit employees are assigned to ensure that healthy, safe working conditions are maintained, and to ensure compliance with applicable laws, rules and regulations, and this Agreement. The Employer will provide feedback to employees and the Union regarding the results of any action taken.

The Employer agrees:

1. to provide information concerning Federal Employee Health Benefits and Life Insurance Programs, pre-retirement planning, retirement benefits information, the USDA's Self Motivated Administered Reading and Training Center, and the Employee Assistance Program;
2. to make information available to employees on health benefits' open season activities and maintain copies of offered health plans for review upon request;
3. to work with the Safety Officer/Manager as applicable, to have safe electrical equipment, and adequate light and ventilation in all work areas;
4. to provide information available through the Department about ergonomic hazards and how to prevent ergonomic related injuries;
5. to grant periodic relief to employees using computer monitors for extended periods during the course of a day, by interspersing other work tasks requiring less visual concentration;
6. to provide, to the extent possible, safety devices, such as antiglare screens and wrist props, which will promote greater safety and comfort for computer operators;
7. to follow the Americans With Disabilities Act and GSA regulations in providing facilities appropriate and adequate to accommodate the needs of disabled employees;

8. to obtain and provide to the Union copies of applicable regulations;
9. to make available for review by the Union all safety reports generated by or required by law, regulation, and/or this Agreement; and
10. to assure the provision of safe, potable drinking water to all Unit employees within ready access of working areas.

Section 3

The Union will encourage all Bargaining Unit employees to work safely with due consideration for the safety, health and comfort of all fellow employees. To avoid preventable unhealthy or unsafe working conditions, the Union will encourage respect and care by Bargaining Unit employees for the Employer's facilities and equipment and their own work environment.

Section 4

Each Bargaining Unit employee shall report any unsafe or unhealthy working conditions to his/her immediate supervisor as soon as any such conditions come to his/her attention.

Bargaining unit employees will not be subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthful working condition or other participation in the Employer's Safety and Health Management Program.

The Employer will investigate the reported condition as soon as is practicable. To the extent possible, the Union will be given an opportunity to accompany any inspector who responds on such a complaint during the inspector's physical inspection of the workplace unless it would be hazardous to accompany the inspector. The Union representative will be granted official time for this purpose.

The Employer will ensure a timely response to an employee report of hazardous conditions. No employee will be unreasonably required to work in a situation determined to pose the threat of an imminent danger or significant health hazard as determined by the appropriate Safety Officers.

If an employee is assigned duties which he/she reasonably believes could possibly endanger his/her health or well-being, the employee will immediately notify his/her immediate or secondline supervisor of the situation. If the supervisor cannot solve the problem and agrees with the employee, the supervisor will, under normal circumstances, delay the assignment and refer the matter through the proper channels for appropriate action. When the supervisor does not agree with the employee's concerns, the employee has the right to seek effective redress through a normal hazard report by consulting the Union and filing a report in accordance with the applicable agency or departmental regulations.

Section 5

Employees who become injured or occupationally ill in the performance of duties shall report the injury or illness to their supervisor immediately. The supervisor will refer the employee to the Human Resources Management Division, the Health Unit, or other medical service as appropriate and as permitted by applicable law, rule or regulation. The supervisor shall also advise the employee to contact the Human Resources Division (HRD) to obtain information on benefits under the Federal Employees' Compensation Act. The Employer and employee shall cooperate in promptly processing all paperwork in connection with compensation claims.

Section 6

Each building in which Bargaining Unit employees are stationed will have an Occupant Emergency Plan. The Employer will issue an annual reminder of the Occupant Emergency Program Plan.

Section 7

The Employer will provide first-aid kits at all building locations for use when Health-Unit facilities are not available.

The Employer may provide for training to interested employees for cardiopulmonary resuscitation (CPR) during duty or non-duty hours. If training is taken during duty hours, official time will be given to those approved in advance for participation.

Section 8

The Employer currently participates in the Federal Employee Occupational Health Program administered by the Public Health Service, U. S. Department of Health and Human Services, on a site that is staffed with qualified medical personnel Mondays through Fridays.

ARTICLE XVI PERSONAL PROTECTIVE EQUIPMENT/CLOTHING

Section 1

Members of the Bargaining Unit shall groom and attire themselves in a neat, clean manner which will not erode public confidence in the professionalism of the BARC work force.

Section 2

The display and wearing of Union insignias, such as pins, pocket penholders, or tie tacks shall be permitted. Apparel shall not be considered inappropriate because it displays the Union logo or insignia, provided the insignia does not cover their ID name or the Unit's designation. No items will be worn that present a negative tone or impact on BARC and/or management.

Section 3

Safety equipment needed to protect employees shall be furnished and replaced, when necessary,

by Management All equipment issued will provide protection to employees subjected to conditions for which an OSHA standard exists or is required by regulation. All safety equipment shall be certified or approved to provide protection from hazard at the approval level of safety.

Section 4

Employees shall be required to use all safety equipment issued for these purposes.

Section 5

T-shirts and/or similar clothing shall be allowed to be worn in the event any employee is not working in a hazardous area or an area easily seen by the public; and the temperature that they must work in is excessively hot. No items shall be worn that has sayings or statements that can be considered as discriminatory or derogatory to BARC and/or management or the general public.

Section 6

Hats shall be permitted, as long as they do not display anything negative or sayings that are not professional.

Section 7

The Employer shall pay expenses for equipment and clothing connected with providing uniforms and required safety equipment.

Reasonable accommodation will be provided for individuals with disabilities that are required to wear and use personal protective equipment.

Section 8

Management shall supply appropriate BARC support personnel with uniforms. These uniforms shall be long and short sleeve shirts, pants, and safety shoes. In addition, foul weather gear, rain suits and/or insulated snow suits and hats, etc. shall be supplied to appropriate staff, as determined by management. Worn-out clothing will be returned, prior to issuance of new equipment.

Section 9

Safety shoes shall be supplied to all employees at BARC, who require safety shoes in the performance of their duties. Safety shoes will be supplied yearly, or on an as-needed basis.

Employees shall select safety shoes that are offered by the company selected by Management/Union, as long as they are cost-effective and meet the safety requirements encountered during the performance of their duties.

Section 10

Eye wear/safety eye glasses shall be supplied by the Agency on an as-needed basis, not more than once every two (2) years. It shall be the sole responsibility of the employee to pay for his/her eye examination. If glasses are broken or destroyed as a result of official duties, replacement will be provided.

Section 11

The Employer shall provide adequate disposable outer wear, proper equipment and wash areas for employees at no cost to the employee.

Section 12

No items of clothing shall be worn which have sayings and/or illustrations that can be considered discriminatory or derogatory to BARC and/or Management or the general public.

Section 13

Management and the Union agree that providing uniforms and safety equipment is beneficial to the Bargaining Unit. The Parties agree that employees are responsible for wearing all items provided for by this article. Employees will follow established procedures for having uniforms/equipment turned in for maintenance and/or cleaning.

ARTICLE XVII HAZARDOUS WEATHER

Section 1

The dismissal of Unit employees during hazardous weather situations will normally follow OPM's Dismissal or Closure Procedures. Changes in the hazardous weather plans will not normally be made without first giving the Union an opportunity to provide input and to request negotiations.

Section 2

Management will implement the approved location hazardous weather plan and current Agency Policies and Procedures 402.4 and OPM's Dismissal or Closure Procedures in a manner that treats all employees fairly and equitably, and ensures that all safety is of prime concern.

Section 3

When a non-essential Bargaining Unit employee is unable to report for duty because of hazardous weather, the procedures outlined in the Agency Policies and Procedures 402.4 and OPM's Dismissal or Closure Procedures on hazardous weather will be followed in determining whether or not the employee will be excused from duty. Reasonable requests for official leave in hazardous weather situations will be approved by the supervisor.

Section 4

Upon request, employees who are denied hazardous weather leave will be given written justification for the denial by the supervisor. Determinations of relief from duty for hazardous weather will be in accordance with Agency Policies and Procedures 402.4 and OPM's Dismissal or Closure Procedures.

Section 5

When granting official leave during the time a location is open, whether for the maximum two (2) hours or extended absence, the following criteria must be met:

1. The emergency situation giving rise to the request is general rather than personal in scope and impact
2. That reasonable efforts were made and available alternatives were explored by the employee. Included in the decision should be the distance between the employee's principal residence and the place of work, mode of transportation, success other employees similarly situated had in reporting to work, and other relevant factors.
3. The weather or emergency condition was responsible for the unavoidable and necessary delay.
4. In the event of hazardous weather essential employees will not be expected to endanger their health or their safety by making dangerous attempts to reach the worksite. Exigency employees are identified by management and are determined to be necessary to perform work regardless of weather or emergency conditions. When such an employee is required to report to work and they do not, granting an employee's request for leave, or placing the employee on Absent Without Official Leave (AWOL) status is solely the discretion of the supervisor and is subject to leave requirements in accordance with Agency Policies and Procedures 402.4.

Section 6

When local authorities such as the Highway Patrol or Highway Department issue announcements advising no travel in the area of the employee's residence and/or the work location, the employee will not be expected to make dangerous attempts, which could endanger his/her safety to get to work. Supervisors will be lenient in granting leave under these conditions.

Section 7

In the event of hazardous weather, exigency employees will not be expected to endanger their health or their safety by making dangerous attempts to reach the worksite. Exigencies employees are identified by management and by definition are determined to be necessary to perform work regardless of weather or emergency conditions. When such an employee is required to report to work, they will make every attempt necessary to reach the worksite unless their safety is in danger. If they do not report to duty, granting an employee's request for leave, or placing the employee on Absent Without Official Leave (AWOL) status is solely the discretion of the supervisor and is subject to normal leave requirements. It also should be noted that there is no authority to pay

premium compensation of any kind, to grant compensatory time, or credit hours to exigency employees when they are required to report to work or remain on the job during hours constituting their regular schedule, even though non-exigency employees are released from duty with full pay and no charge to personal leave.

Section 8

A copy of OPM's Dismissal or Closure Procedures shall be posted on the Agency website. A copy of the policy may also be viewed at: <http://www.opm.gov/oca/compmemo/dismissal.pdf>

ARTICLE XVIII AWARDS

Section 1

The use of monetary and non-monetary awards has been proven to have a significant effect on employee morale, motivation and performance. Award programs provide recognition based on employee performance, improvement, contributions and achievements that contribute to an Agency's mission. An effective awards program is intended to motivate and reward employees to continually strive for excellence.

Section 2

All Parties agree to comply with the "USDA Guide for Employee Recognition," any other fact sheets or policy and procedures issued by Human Resources Division (HRD) and any local policy issued by the Beltsville Area, in administering an awards' program for Bargaining Unit employees. A copy of this guide, fact sheet or policy and procedure may be obtained from Performance and Awards Staff, HRD. Local policy issued by the Beltsville Area, may be obtained from the area office. The Beltsville Area will equitably recognize and reward individuals and groups for excellence in service to the mission of the organization.

Section 3

All Bargaining Unit employees are eligible for most types of recognition. This includes all fulltime, part-time and seasonal employees, regardless of appointment type, unless otherwise noted below.

Section 4

Non-monetary awards are given for a specific outstanding accomplishment, such as a superior contribution on a project or assignment, a scientific achievement, an act of heroism or a cost savings. Non-monetary awards may consist of letters of appreciation, certificates, time off and/or keepsake items.

Monetary awards are given for performing well during the course of a rating cycle (performance awards) or for a particular accomplishment, such as those described above under non-monetary awards, extra effort awards and spot awards.

1. Performance Awards - All Bargaining Unit employees are eligible for performance awards. These awards are given at the end of the performance cycle and Bargaining Unit employees may only receive one a year. Annual performance must be at least fully successful to receive a performance award and the award amount may not exceed ten (10) percent of an annual salary.

2. Quality Step Increases QSI's - All Bargaining Unit employees, except for wage grade employees, are eligible for QSI's. QSI's are given at the end of the performance cycle and Bargaining Unit employees may only receive one within a 52 week period. Annual performance must be outstanding to receive a QSI.

3. Extra Effort Awards - All Bargaining Unit employees are eligible for extra effort awards. These awards may be presented individually or to groups. These awards may be given at any time and there is no limit to the number of extra effort awards a Bargaining Unit employee may receive. Amounts range from \$50 to \$10,000.

4. Spot Awards - All Bargaining Unit employees are eligible for spot awards. These awards may only be presented individually: These awards may be given at any time and there is no limit to the number of spot awards a Bargaining Unit employee may receive. Amounts range from \$50 to \$750.

(Award information provided above is basic and is not all inclusive. Please refer to HRD guidance for specific information.)

Section 5

The Beltsville Area agrees to permit the Union to monitor the use of awards for Bargaining Unit employees and to propose changes to this Article, if necessary.

ARTICLE XIX ACCEPTABLE LEVEL OF COMPETENCE

Section 1

If the employee is performing at the fully successful level or above, the Employer shall grant a within-grade-increase (WGI) to the employee in the first pay period following completion of the required waiting period.

Section 2

When a manager concludes that an employee's work is not at the fully successful level, the employee will be notified in writing, at least fifteen (15) workdays in advance of the effective date of the WGI being denied. The notification will state the standard(s) that the employee has failed to "meet fully successful" level and what needs to be improved upon to bring the performance to the "meets fully successful" level. The notice will advise the employee of their reconsideration rights. Management will first follow all steps in Section 2, under Article XX, Unacceptable Performance.

Section 3

An employee may request reconsideration of a negative level of competency determination by filing, not more than fifteen (15) workdays after the effective date of the WGI, a written response setting forth the reasons the Agency should reconsider the determination. Requests for reconsideration shall be filed with the employee's second level supervisor.

Neither the substantive nor procedural aspects of WGI denials may be grieved until a reconsideration decision is due or issued, whichever is earlier. A reconsideration decision is due twenty (20) workdays from the date of the Employer's receipt of the employee's written request.

Upon reconsideration that finds an employee should have been granted a WGI, the WGI will be processed with the original effective date.

ARTICLE XX UNACCEPTABLE PERFORMANCE

Section 1 - Scope Definition

An action based on unacceptable performance is defined as the reduction in grade or removal of an employee whose performance is at the unacceptable level in one or more critical elements of the employee's position.

This Article applies only to employees who have completed their probationary or trial period. It does not apply to employees serving on a temporary appointment.

Section 2

Consistent with Chapter 43 of Title 5 of the United States Code, action for unacceptable performance will be handled in the following manner:

1. Because the performance appraisal is a continuous process, the following procedures shall be followed at any time during the year when the Employer concludes that a Bargaining Unit employee's performance on any critical element is below the "meets fully successful" level.

2. There must be a discussion between the Employer and the Bargaining Unit employee for the purpose of:
 - A. advising the Bargaining Unit employee of specific shortcomings between observed performance in the performance element(s) under scrutiny and the performance standard(s) associated with the particular element(s);

 - B. Providing the Bargaining Unit employee with a full opportunity to explain the observed deficiencies; and,

C. advising the employee of opportunities to attend counseling and training.

3. After the discussion, the Employer should determine what action is best suited to the particular circumstances. Unacceptable performance may lead to reassignment, reduction in grade or removal.

4. Performance Improvement Period (PIP):

Prior to initiating an action to involuntarily remove or downgrade an employee, the employee must be given a written notice of unacceptable performance in one or more critical elements and a PIP of at least ninety (90) days to provide the employee with an opportunity to bring performance to the "meets fully successful" level.

This notice will include:

- a. specific information as to how the supervisor will assist the employee in that effort;
- b. specific information as to what the employee must do to bring performance to the "meets fully successful" performance level in that period; and
- c. a statement that every effort will be made to evaluate the employee's performance on a biweekly basis, but at least monthly during the PIP.

During the PIP, the employee will be given the opportunity to work on those portions of the job that are unacceptable, but not to the exclusion of other work assignments. The supervisor will ensure that the employee receives adequate work time in order to improve the area that has been declared "does not meet fully successful" level.

- a. Normally within fourteen (14) days after the end of the performance improvement period (PIP), the employee will be notified in writing whether the employee's performance is at the "meets fully successful" level or whether the performance remains at the "does not meet fully successful" level.
- b. If the determination that the employee's performance remains at the "does not meet fully successful" level, the Employer may reassign the employee upon written notice that includes a statement of grievance rights, or as set forth in subheading number 7 below, propose to remove or demote the employee.

5. Notice of Proposed Adverse Action:

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

- a. of the nature of the proposed action;

- b. of the critical element(s) of the employee's position involved in each instance of unacceptable performance;
- c. of the specific instance(s) which demonstrates unacceptable performance by the employee on which the proposed action is based;
- d. the time to reply both orally and/or in writing and to whom;
- e. the right to be represented by the Union or other representative.

Section 3

The employee will be given the opportunity to respond orally and/or in writing prior to a decision. If the employee elects to make an oral reply, the Employer will make a copy of the oral report and will provide a copy to the employee.

Section 4

If, after full consideration of the case an adverse action is warranted, the Employer will decide whether to remove or demote the employee.

The deciding official shall prepare a decision letter, which shall include all of the following:

- a. Findings with response to each reason and specification listed in the letter proposing the action.
- b. Findings with response to each factual dispute, if any, raised by the employee's reply;
- c. The effective date of the action. The effective date must be no earlier than thirty (30) workdays after the date on which the employee received the proposed notice.
- d. Written concurrence in the action by an ARS official who is in a higher pay position (if one exists) than the official who proposed the action;
- e. Notice to the employee that he/she has the option to appeal the action to the Merit Systems Protection Board (MSPB) or through the negotiated grievance procedure, but not both; and,
- f. Notice to the employee that he/she will be deemed to have exercised his/her option to raise the matter under one procedure or the other at the time the employee timely files a written grievance or files a notice of appeal under the applicable MSPB procedure.

Section 5

If the employee is the subject of an action based on unacceptable performance related to a disability, the decision letter will inform the employee of his or her retirement eligibility and rights, and will explain how to pursue them. The Employer will give every consideration to authorize the

employee to take sick leave, annual leave or leave without pay pending the final determination regarding the disability retirement, to allow for a determination to be made concerning the disability retirement

Section 6

Any of the limits set forth in this Article may be extended or waived by mutual agreement in writing by both parties.

ARTICLEXXI POSITION CLASSIFICATION

Section 1

The Parties agree that position descriptions will accurately reflect the duties and functions performed by Bargaining Unit employees, and degree of supervision related to their positions, although temporary variations from the official position description may occur on an exception basis. Except where the Agency would be significantly impeded in carrying out its overall mission, duties not specified in an employee's position description, or reasonably related thereto, will normally not be assigned unless temporarily required by the needs of the Agency.

Section 2

The parties agree that all employees will be paid equal pay for substantially equal work in accordance with applicable laws.

Section 3

The Agency will maintain a complete and up-to-date file of position descriptions of all classified positions in the Bargaining Unit and will provide each employee with a copy of his/her position description.

When an employee believes that there is a question concerning the proper classification of his/her position, the employee will discuss the situation with his/her manager. If the manager cannot resolve the employee's concerns to the employee's satisfaction, the employee may request that the manager arrange for an appropriate Classification Specialist to provide further information to the employee.

When an audit is required, the Union will be notified in advance. The audit will normally take place within thirty (30) work days. If such an audit is conducted, the employee will be afforded an opportunity to discuss the results and analysis on the audit with his/her manager and, if necessary, with the Classification Specialist. Upon request, a copy of the audit report will be given to the employee.

An employee may file a statutory classification appeal of his/her position in accordance with the appropriate rules and regulations. The Agency will provide advice and assistance to employees filing appeals.

Planned changes in duties and responsibilities resulting from reorganizations, or the application of changes in classification standards to encumbered positions will be handled in accordance with Article XXI of this Agreement.

The Agency will insure that all positions are properly classified. Should periodic reviews be utilized, the Union will be notified in advance.

Section 4

Changes in grade level based on reclassification will be effective on the first pay period following final approval of the action.

Section 5

The Agency agrees to notify the Union no less than five (5) pay periods prior to the effective date of any demotion action covered by this Article and provide the Union with an opportunity to bargain, pursuant to 5 U.S.C. 71.

ARTICLE XXII HOURS OF DUTY

Section 1

Standard tours of duty at the Center shall be the established core hours from 0730 to 1600 hours, Monday through Friday, with a scheduled half-hour for lunch.

Section 2

Nonstandard tours of duty for full-time shift workers shall:

- a. Normally contain two (2) consecutive days off in each seven (7) consecutive calendar days.
- b. Be eight (8) hours normally in duration and continuous and shall not include a lunch period (paid or otherwise).

Section 3

Employees assigned to nonstandard tours of duty will have their tours of duty/work schedules posted within their Unit. The schedules shall cover at least a four (4) week period and shall be posted at least one (1) week in advance. Due to emergencies and unforeseen circumstances, it may become necessary to change an employee's tour of duty. When this occurs, the employee will be given as much advance notice as possible and a copy of the adjusted work schedule.

Section 4

Unit employees working a standard tour of duty will be allowed one (1) fifteen-minute break period during each assigned four (4) hours of duty, whenever practical.

If an employee is unable to take a break because of the work load, the break may not be added as a continuation of the lunch period and shall not be accumulated or used immediately prior to the end of the tour of duty.

Section 5

Supervisors shall be responsible for determining the need for and duration of adequate clean up time before lunch and at the end of the workday. Clean up time shall include the time necessary for putting away tools, cleaning up, showering out and all necessary transportation from the work site.

Section 6

1. Employees shall wear or carry pagers/cell phones on a voluntary basis.

Unless otherwise documented by their position description, pagers/cell phones will only be required in areas where the need has been demonstrated.

ARTICLE XXIII OVERTIME

Section 1

The assignment of overtime is a function of Management. Assignments will be based on workload only and not used as a reward or penalty to employees. Overtime will be paid in accordance with applicable laws and regulations (ARS Policies and Procedures 402.3)

Section 2

Assignments shall initially be made by seeking volunteers who are fully qualified to perform the work. If there are insufficient numbers of volunteers, assignments will be made in an equitable manner from individuals who have the qualifications and/or special skills to perform work.

Section 3

Employees will be provided as much advanced notice as possible when overtime is being assigned. Employees designated to work overtime on a day outside the basic workweek will normally be notified no later than the start of the scheduled lunch period two (2) days before the assignment.

Section 4

Work and holiday schedules will be made as far in advance as possible. Assignments will be rotated among the qualified employees.

Section 5

The parties hereby agree to the following with respect to the implementation of the initiative to reduce overtime within the Beltsville Area:

1. Effective immediately, managers and employees throughout the Area Management Units will work together in good faith, to jointly find an acceptable method to reach our common goal of reducing overtime throughout the Area.
2. During the negotiation of the Agreement, either party may propose changes to the implementation of the scheduling of overtime.
3. This Memorandum of Understanding constitutes the Parties' total understanding with respect to the current initiative to reduce the amount of overtime being used.
4. Each work Unit will be responsible for developing its own individual operating procedures to implement this initiative.

ARTICLE XXIV CALLBACKS

Section 1

Management and the Union agree that the overall welfare of employees is important. They also agree that in emergency situations, employees must be called back to work to perform duties that will prevent the loss of property and/or research. To provide as much flexibility as possible, employees will be provided pagers and/or other communication devices so that they may respond as necessary, but not be required to remain at a location that is near a telephone.

Call-back overtime is a form of irregular or occasional overtime work performed by an employee on a day when work was not scheduled for the employee or for which he is required to return to his place of employment after having already concluded his tour of duty and departed the work site.

Whenever an employee is required to return to work on a callback overtime basis, he/she will be paid a minimum of two (2) hours of overtime compensation.

The rate which the above-described overtime compensation shall be paid will be in accordance with the provisions of the FLSA, 5 U.S.C. 5542, or any other applicable authority, or provisions of this Agreement. When an employee is entitled to call-back overtime compensation pursuant to the FLSA and another authority, the employee shall be paid under whichever authority provides the greater callback overtime pay entitlement.

Section 2

A volunteer system will be the preferred method for overtime rotation. Individual employees will not be forced to work overtime against their expressed desires as long as the work can be performed

by other qualified employees willing to work. However, if there are insufficient volunteers, a rotation system or management assignment of work will be used.

Overtime will be offered equitably among employees that the Agency finds to be qualified for the assignment within a particular trade or occupation within an organizational element.

ARTICLE XXV PAY AND ENVIRONMENTAL DIFFERENTIAL

Section 1

Determinations made by the Center under Section 2 below shall be subject to the negotiated grievance procedure of this Agreement

Section 2

The Center will determine when a work situation warrants, or no longer warrants, payment of an environmental differential or hazardous duty pay.

Section 3

If a grievance occurs over a situation involving wage grade employees, the Center agrees to submit the work situation, together with the Parties' recommendations, to the Agency Human Resources Division, ARS for a determination as to whether the work situation warrants the authorization of an environmental differential.

Section 4

Management will consider hazardous duty-pay for Bargaining Unit employees working with hazardous chemicals where OSHA standards cannot be met.

ARTICLE XXVI DETAILS AND TEMPORARY PROMOTIONS

Section 1

A detail is the temporary assignment of an employee to a different position for a specified period of time.

Section 2

Supervisors have the right to detail employees to other work for reasons such as emergencies, absence of employees, urgency of work to be accomplished and training. All such details will be made in consideration of organizational needs and no detail will be made to avoid the principles of merit promotion. Qualified and available employees, when practical, will serve on detail on an equitable basis.

Section 3

If a detail exceeds thirty (30) consecutive calendar days, the appropriate supervisor will initiate a Request for Personnel Action (SF-52) which will document the detail for submission to the Employee's Official Personnel Folder.

Section 4

When a detail exceeds five (5) consecutive workdays, the affected employee may request appropriate training and a copy of the position description to which he is detailed.

Section 5

When appropriate, temporary promotions to higher level positions may be utilized and selections will normally be made from eligible employees who express an interest in the temporary promotion.

ARTICLE XXVII MAXIFLEX POLICY

Section 1

The REE Policy and Procedure 402.1, Flexible Work Schedules will serve as an overall guide. The following procedures will be used:

Section 2

All alternative work schedules will require the concurrence and approval of the employee's supervisor in advance of work schedule changes. This will be at the minimum of one pay period "in advance. All individual choices will be considered. However, supervisors must ensure adequate coverage to meet customer needs. Therefore, All employees may not be accommodated in the same manner.

Section 3

Employees should be aware that certain conditions may cause their approved Maxiflex schedules to be changed by their supervisor. Some of these conditions are:

- a. Agency or mission requirements
- b. Leave-sick, annual, etc.
- c. Training
- d. Contractor support-weekends, evenings, scheduled outages, etc.

Section 4

Employees on 4/10 tour-of-duty cannot have their days scheduled to create 4 consecutive days off (i.e., first Friday of pay period and the second Monday).

Section 5

Requests for changes to tours-of-duty to increase time off during holiday periods will be reviewed on a case-by-case basis, and approved or disapproved, at the discretion of the supervisor. Decisions will be based on workloads and staffing needs.

Section 6

Employees attending training of more than 8 hours will revert back to a standard tour-of-duty within that pay period.

Section 7

The earning of credit time must be approved in advance by the employee's supervisor or designee. Overtime other than for emergencies must be authorized and approved in advance.

Section 8

Deviation from an approved tour-of-duty must have supervisory concurrence and approval.

Section 9

Employees will be credited eight (8) hours of holiday leave (excused absence) on an official 8 hour holiday. Anyone on a 5/4/9 or 4/10 schedule will have to adjust their work schedule to use annual leave, compensatory time, or credit hours to compensate for the additional time in excess of 8 hours on a designated holiday. With supervisory approval, schedules may be changed in advance of a holiday to allow the employee to schedule the holiday leave as one (1) of their eight (8) hour days. The day off for a holiday would then be an eight (8) hour day, instead of an in-lieu-of day.

Section 10

Employees on shift work will not be able to participate in the Maxiflex Policy.

ARTICLE XXVIII LEAVE

Section 1

Employees must submit leave requests as far in advance as possible. Supervisors shall respond within a reasonable period of time as far in advance as is practicable to a request from employees for the use of annual leave. Supervisors shall give consideration to employees' plans and desires before canceling or rescheduling annual leave that has been approved in writing.

Section 2

Employees shall submit their leave request in writing, as far in advance as possible. For extended periods of one week or more, other requests for annual leave shall be applied for, not more than thirty (30) days in advance.

Section 3

If, after reporting for duty, an employee is informed of an emergency personal situation and desires leave, supervisors shall make every reasonable effort to grant such a leave request consistent with mission requirements. ·

Section 4

Tardiness of less than one (1) hour may be excused by the supervisor for justifiable reasons.

Section 5

When an employee is unable to contact his/her supervisor to request leave, he/she shall contact his/her second-level supervisor. The pre-submission of leave slips will not be a requirement for approval of annual leave in the event of a death in the immediate family (such as father, mother, spouse, and children).

Section 6

Administratively acceptable evidence to support sick leave absences of three (3) consecutive workdays or less will normally be the employee's written statement. However, where the supervisor has a legitimate management reason for disbelieving the reason for absence, medical documentation may be required. Sick leave absences of more than three (3) consecutive workdays will normally be supported by a physician's statement and shall be considered administratively acceptable evidence.

Supervisors will counsel employees after establishing that the employee is not properly using sick leave, prior to formal action being taken. The supervisor shall advise the employee in writing that he/she is required to support all future use of sick leave by a physician's statement and that his/her own written statement shall not be considered administratively acceptable evidence. The requirement that employees support all use of sick leave by a physician's statement will normally not exceed six months, if the employee's absences due to illness have been satisfactorily supported to the supervisor.

Section 7

Leave may be granted in fifteen (15) minute increments.

Section 8

Prior to or as soon as practical thereafter, ARS will inform Unit employees entering non-pay status of their options relative to coverage under the Federal Employee Health Benefit Program.

Section 9

Administrative leave may be granted, in accordance with the provisions of Policy and Procedure 402.6, for employees who participate in the sponsored blood drive with the supervisor's approval.

Section 10

Requests for sick leave for medical appointments must be made in advance. Requests for sick leave due to illness or injury are to be made no later than one (1) hour after reporting time. Sick leave requests for shift work employees must be made at least two (2) hours prior to scheduled reporting time.

Section 11

Employees are expected to call their supervisors within the same time constraints on each succeeding day the illness persists. In cases of extended illness, employees may make prior arrangements with their supervisor to call other than on a daily basis to keep supervisors aware of their health status.

Section 12

Annual leave or leave-without-pay may be granted on the day of the request after:

- a. requests are made by shift employees not less than two hours prior to reporting time and by non-shift employees not later than one (1) hour after reporting time;
- b. a determination is made that an employee actually has an emergency; and/or
- c. the supervisor determines the absence from duty will not adversely affect the Unit's ability to accomplish the tasks assigned for that day.

Section 13

Annual leave or leave without pay will not be granted simply because it is inconvenient for an employee to work that day.

Section 14

Employees who intended to use leave under the provisions of FMLA must provide notice of intent as soon as practical, in accordance with the regulations. The Agency may require medical certification(s) for leave to care for a family member with a serious health condition or the employee's serious health condition that prevents the employee from performing essential duties.

Section 15

Except in unusual circumstances, employees (not wife/husband, friend, brother, sister, etc.) are expected to make their own leave requests to their immediate supervisor. Only persons in the employee's supervisory chain of command (not secretaries, timekeepers, coworkers, etc.) are authorized to approve leave requests.

Section 16

When employees are unable to contact the immediate supervisor, they must leave a message indicating where the supervisor may reach them to grant approval of requested leave. Management Units with an additional level of supervision may establish the requirement for an employee to ask for the next higher supervisor. However, granting of leave should be kept within the Management Unit, unless extenuating circumstances warrant elevating the request.

Section 17

If you have questions or need further information regarding this policy or need a copy of the Leave Policy and Procedure Number 402.6, please contact your supervisor.

Section 18

LEAVE CATEGORIES

a. Annual Leave is a benefit which permits employees to be absent from duty for personal reasons without pay loss, and is subject to supervisory approval.

b. Sick Leave is a benefit which permits employees to be absent from duty when incapacitated for duty because of sickness or injury. For medical, dental or optical examination or treatment, and is subject to supervisory approval.

c. Leave Without Pay is an approved absence from duty in a non-pay status that has been requested by an employee in advance. It is not granted automatically because an employee has used all available sick leave or annual leave. It is not appropriate for unauthorized absences.

d. Absence Without Official Leave (AWOL) is an absence from duty which was not authorized or approved. Employees who absence themselves from duty, without proper authorization, place themselves in an AWOL category, which is a non-pay status and may subject themselves to disciplinary action.

e. Family Medical Leave Act (FMLA) is an entitlement for covered full-time employees who have completed one (1) year of service. Twelve (12) administrative workweeks (480 hours) of leave without-pay may be used during a twelve (12) month period for specific reasons, as outlined in 402.6. For part-time employees, the amount is prorated.

f. Sick Leave For Family Care can be used to care for a family member or someone of whose close affinity with the employee is equivalent of a family relationship. Can use up to 104 hours in

a leave year for general health condition, as well as bereavement and up to 480 hours in a leave year for serious health condition.

g. Absence for Religious Observances is an approved absence from duty in which employees may use annual leave or credit hours to cover the absence, or employees may request to work overtime and take compensatory time off (the extra time in such cases may be worked either **before or after** the time off). Supervisors should be as liberal and accommodating as mission requirements permit in adjusting employees' schedules to allow for religious observances.

h. Advanced Sick Leave in the event of serious disability or illness, supervisors may grant a maximum of thirty (30) days advanced sick leave to permanent employees. Employees serving under a limited appointment may be granted advanced sick leave, not to exceed the amount of sick leave they will earn in the remaining period of employment. Advanced sick leave may not be authorized when it is known or reasonably expected that employees will not return to duty (e.g., employees have been approved for disability retirement or have submitted a resignation).

i. Leave without pay may be granted for illness or disability.

j. Sick leave can be appropriately used by a disabled employee (who uses prosthetic devices, wheel chair, crutches, guide dog, or other similar type devices) for equipment repair or guide dog training or medical treatment.

ARTICLE XXIX HOLIDAYS

Section 1

Legally declared Federal holidays are applicable to Bargaining Unit employees.

Section 2

When operational requirements permit, employees scheduled to work on actual established legal holidays, or days observed in lieu of such holidays, shall be given such days off if requested by the employee in advance and approved by his/her supervisor. For full-time employees a holiday consists of eight (8) hours.

Section 3

Only the required number of employees will be required to work on holidays. Essential employees scheduled to work on legal government holidays or Federal Government closures will be required to report for duty.

Section 4

A list of employees assigned to work actual holidays shall be posted at least ten (10) working days in advance.

Section 5

List of Holidays is as follows:

This list is taken from the United States Code Book (Section 6103, Holidays, page 426.)

New Year's Day, January 1.

Martin Luther King, Jr.'s Birthday, the third Monday in January.

Washington's Birthday, the third Monday in February.

Memorial Day, the last Monday in May.

Independence Day; July 4.

Labor Day, the first Monday in September.

Columbus Day, the second Monday in October.

Veteran's Day, November 11.

Thanksgiving Day, the fourth Thursday in November.

ARTICLE XXX DISCIPLINARY AND ADVERSE ACTIONS

Section 1

A "suspension" is defined as the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

A "disciplinary action" is defined as a letter of an official reprimand, a suspension of fourteen (14) calendar days or less or alternative discipline.

A "reprimand" is defined as a written document describing the inappropriate conduct or other deficiency (e.g., failure to obtain prior approval for outside employment) giving rise to the reprimand, and provides official notice that a failure to correct the inappropriate conduct or deficiency, or future misconduct, may result in more severe action.

An "adverse action" is defined as suspension of more than fourteen (14) calendar days, involuntary reduction in grade or pay, or removal.

Section 2

No Bargaining Unit employee will be disciplined and/or subject to adverse actions, except for such cause as will promote the efficiency of the Service. The Employer agrees that any disciplinary and/or adverse action taken will be appropriate to the specific offense and in accordance with applicable law, rules and government-wide regulations. In those instances where formal action is not taken, supervisors shall discuss with their employees unacceptable behavioral actions which reflect negatively upon the Service and which could, if continued, constitute grounds for disciplinary and/or adverse actions. Disciplinary and/or adverse actions shall be consistent with the concept of progressive discipline, as appropriate.

Unless otherwise stated within this Article, disciplinary/adverse actions will be administered, as timely as possible.

In any disciplinary action or adverse action, the employee will be furnished with a copy of the material relied upon by the Employer to take the action at the time of the notice of the proposal of such action.

Employees may grieve those items in Section 1, in accordance with the terms of this contract.

An original and duplicate of the letter of a reprimand, notice of proposed action and/or decision will be furnished to the employee. The employee, at his/her option, may furnish a copy to the Union.

Section 3

Reprimands may be maintained in the employee's Official Personnel Folder (OPF) for a period of up to two (2) years. This time period will be stated in the letter of a reprimand. The period of retention may subsequently be reduced when the employee's supervisor determines that circumstances warrant a shorter period. Such determination may be made in response to an employee's request to remove the reprimand from the employee's OPF. Such reprimands which have been overturned as a result of grievance or other authority shall be immediately removed from all official personnel records.

Section 4

Cause:

- a. The Employer may suspend an employee for fourteen (14) calendar days or less, for such cause as will promote the efficiency of the service.
- b. Cause will include discourteous conduct to the public confirmed by an immediate supervisor's report of such instances within any one (1) year period or any other pattern of discourteous conduct. To clarify the alleged misconduct(s) and, if necessary, help correct employee behavior, the supervisor will discuss the pattern of conduct in a timely fashion with the Employee.

Procedures:

When the Employer proposes to suspend an employee for fourteen (14) calendar days or less, the following procedures will apply:

1. A notice of proposed suspension of fourteen (14) calendar days or less will be provided to the employee, by an official from HRD/Supervisor and Union representative. The proposed notice will inform the employee of:

- a. the proposed action;

- b. the specific reasons for the proposed action;
- c. the opportunity to review the evidence that is relied upon to support the charges;
- d. the time to reply and to whom to furnish affidavits and other documentary evidence in support of the reply;
- e. the right to be represented by the Union;
- f. the right to request an oral and/or written reply within fourteen (14) calendar days from the receipt of the proposed action.

2. The Employer will issue a final decision after receipt of the written and/or oral reply, or the termination of the time to reply period. This letter will state which reasons and specifications are sustained, and will address factual disputes, if any, raised in the employee's reply by stating the reasons why each factual dispute was rejected.

Section 5

Notice of Proposed Adverse Action:

Unless otherwise provided by law (e.g., the crime provision of 5 U.S.C. 7513 (b), an employee who receives a proposal for an adverse action is entitled to at least thirty (30) calendar day's advance written notice which informs the employee of:

- a. the proposed action,
- b. the specific reasons for the proposed action,
- c. the opportunity to review the evidence that is relied upon to support the charges,
- d. the time to reply in writing and/or orally, and to whom to furnish affidavits and other documentary evidence in support of the reply,
- e. the right to be represented by the Union, and an attorney, or other representative.

The Employer will issue a final decision following the receipt of the written and/or oral reply. The final decision letter will state which reasons and specifications are sustained and will address factual disputes raised in the employee's reply.

Action by the Deciding Official:

After carefully considering the proposal letter, evidence of record, and the employee's response, if any, including any mitigating factors, the deciding official shall decide:

- a. to overturn the proposed penalty;

- b. to sustain the proposed penalty; and/or
- c. to reduce the proposed penalty.

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

Section 6

Any of the time limits set forth in this Article may be extended by mutual agreement of the Parties in writing.

ARTICLE XXXI GRIEVANCE PROCEDURES

Section 1

The purpose of this Article is to provide a mutually acceptable method for the prompt resolution of grievances, at a level that has control and authority to resolve the matter. The Parties agree that most grievances should be resolved in an orderly, prompt and equitable manner that will maintain the self-respect of the Employee and be consistent with the principles of good management and the public interest. The Parties, especially Union representatives and first-line supervisors, are encouraged to meet, as necessary, to informally discuss and attempt resolution of matters or problems of concern to either party, including, but not limited to, employees concerns or dissatisfactions and problems of Agreement interpretation and administration. Most grievances arise from misunderstandings or disputes which can be resolved promptly and satisfactorily on an informal basis. In order to resolve grievances at the lowest level, the Parties agree to have open discussions between the participants of the issue.

Section 2

Grievance means any written and signed complaint that is a matter of concern or dissent to employees in the Unit, is within the control of the supervisor and is not excluded under Section 3:

1. by any employee, concerning any matter relating to the employment of any employee;
2. by any labor organization, concerning any matter relating to the employment of any employee; or
3. by any employee, labor organization, or agency concerning:
 - a. the effect, interpretation, or a claim of breach of a collective bargaining agreement; and

b. any claimed violation, misinterpretation or misapplication of any law, rule, or regulation affecting conditions of employment.

Section 3

The procedures set forth shall be the procedures available to Bargaining Unit employees and to the Parties to this Agreement for resolution of grievances covered under the terms of this Agreement.

Exclusions: The following matters are not grievable under these procedures and are specifically excluded from the coverage of this Article:

- a. any claimed violation of 5 U.S.C. Chapter 73, subchapter m, relating to prohibited political activities (Hatch Act);
- b. retirement, life insurance or health insurance;
- c. a suspension or removal under 5 U.S.C. 7532 (National security reasons);
- d. any examination, certification or appointment administered by Office of Personnel Management;
- e. the classification of any position which does not result in the reduction in grade or pay of an employee, or loss of promotion potential;
- f. reduction-in-force or furloughs of more than thirty (30) calendar days;
- g. non-selection for promotion from a group of properly ranked and certified candidates, or failure to receive a non-competitive promotion. Note: This, however, is grievable if the action or lack of action was based on alleged discriminatory or other prohibited practices in the ranking and certification process, or based on procedural violations;
- h. termination of a probationary employee during the probationary period; and
- i. a preliminary warning notice of an action which, if effected, would be covered under this procedure or under a statutory appeals procedure.
- j. an action which terminates a temporary promotion within a maximum period of two (2) years and returns the employee to the position from which the employee was temporarily promoted or reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted;
- k. non-adoption of a suggestion or disapproval of a performance award.

Section 4

A grievance may be filed by an employee or a group of employees, by the Union, or by the Employer. Only the Union, or a representative designated by the Union, may represent Bargaining Unit employees in such grievances. However, any Bargaining Unit employee or group of Bargaining Unit employees may personally present a grievance and have it resolved without representation by the Union, provided that the Union will be given an opportunity to be present at all formal discussions in the grievance process and receive copies of all documents. Any resolution must be consistent with the terms of this Agreement. The Parties agree to keep the number of participants at a minimum.

Section 5

Step 1 Grievance:

The written and signed grievance must be filed with the lowest level management official who has the authority to grant relief within fifteen (15) workdays of the act or occurrence or within fifteen (15) workdays after the grievant knew, or should reasonably have known, of the act or occurrence giving rise to the grievance.

At the election of the grievant and/or the assigned Union representative, the parties will meet with the Step 1 management official in an attempt to resolve the grievance.

The Step 1 management official shall provide the grievant and the Union with a written resolution within twenty (20) workdays of the date of receipt of the written grievance. Included with such resolution shall be a statement indicating the grievant's right to submit a grievance to Step 2, as well as, the name and title of the reviewing official designated to hear Step 2 of the grievance procedure. If the Administrator is the Step 1 official, then Steps 2 and 3 are waived.

Step 2 Grievance:

If the grievant is dissatisfied with the resolution given in Step 1, the grievant may submit the grievance, including a copy of the Step 1 response received or a statement that no Step 1 response was received, in writing within ten (10) workdays of receipt of the Step 1 response, or within ten (10) workdays of the date the response was due, whichever is shorter, to the next level supervisor. The grievance must specify the relief requested.

A meeting involving the grievant and/or his/her Union representative and the Management official designated to hear the Step 2 grievance may be held to resolve, discuss or clarify facts and issues that may impact the decision.

The reviewing official shall provide the grievant and the Union with a written decision within ten (10) workdays of the receipt of the Step 2 grievance. Included within such decision shall be a statement indicating the grievant's right to submit a grievance to Step 3. The decision shall specify the name and title of the deciding official to whom the grievance may be directed, if it is not resolved at Step 2.

If the Administrator is the Step 2 official, then Step 3 is waived.

Step 3 Grievance:

If the grievant is dissatisfied with the decision given in Step 2, the grievant may submit the grievance, including a copy of the Step 1 and/or Step 2 responses received or a statement that no Step 2 response was received, in writing within ten (10) workdays after receipt of the decision of the step 2 grievance or within ten (10) workdays of the date the response was due, whichever is shorter, to the Deciding Official designated by the Employer. The grievance must specify the relief requested.

A meeting may be held to attempt to resolve the grievance at the mutual agreement of the Parties.

The official listed above shall render a written decision within ten (10) workdays of receipt of the Step 3 grievance. This decision shall be the final Agency decision on the grievance. Included with the decision shall be a statement indicating that if the grievance is not resolved, the Union may refer the matter to arbitration in accordance with Article XXXII.

Grievance taken in response to a written decision letter notifying the employee of an action under 5 U.S. C. 7512 (Adverse Actions) or 5 U.S.C. 4303 (Unacceptable Performance) must be filed as a Step 3 grievance in writing within fifteen (15) workdays of receiving the decision letter.

If, in any step of the grievance procedure, it is determined that the Employer's official does not have the authority to resolve the grievance, the grievant will be informed and the grievance will be forwarded to the proper official. This will fulfill the grievant's obligation to meet the timetable set up in the grievance procedure; but it will not be considered as one of the steps.

Section 6

A grievance by the Employer shall be submitted in writing by the Employer to the Union President within fifteen (15) workdays of the event giving rise to the grievance. The Union will respond in writing to the grievance within twenty (20) workdays of receipt of the grievance. The decision shall specify that it is the Union's final decision on the grievance. If the Employer is dissatisfied with the Union's decision, the Employer may request arbitration.

Section 7

Time limits in this Article may be extended by mutual consent of the Parties. The Parties agree to respond to a grievance within the time frames allowed. Failure by the grievant to meet time limits, or to request and receive an extension of time, shall automatically cancel the grievance, unless mitigating circumstances prevail. *Mitigating circumstances* refer to situations beyond the reasonable control of the Parties, such as, but not limited to, extended military leave, extended detail or temporary duty travel, medical condition, office closure, absence of the employee's representative, or natural disaster. If the responding official fails to meet time limits or receive an extension of time, the grievant may appeal the grievance to the next step of the process (e.g., from Step 1 to Step 2) including arbitration under procedures established in Article XXXII of this agreement

Section 8

When an information request pursuant to 5 U.S.C. 7114 (b)(4) is filed, the time limits will be extended equal to the amount of time reasonably required to provide the information.

Section 9

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

Section 10

The acting party is responsible for ensuring timely delivery of filings and replies. Copies will be provided to the employee, the designated Union representative and the applicable Agency representative. Copies of initial grievance filings will be provided to the Employee Relations Branch, HRD by the filing party.

ARTICLE XXXII ARBITRATION

Section 1

If the decision of the Step 3 Grievance Official is not satisfactory, the Union may request that the grievance be submitted to arbitration. The request for arbitration must be made within thirty (30) calendar days of the receipt of the Grievance Official's decision.

Section 2

Within five (5) workdays after the request for arbitration is received, the Parties will jointly request a panel of seven (7) arbitrators from the roster maintained by the Federal Mediation and Conciliation Service. Within five (5) workdays after receipt of the panel; the Parties will meet and attempt to select one (1) arbitrator from the panel by mutual agreement. If the Parties cannot mutually agree upon an arbitrator to hear the case, the Parties will alternately strike names from the panel until one (1) arbitrator remains. The remaining arbitrator shall be selected.

Section 3

Prior to referring the grievances to the arbitrator, the Parties will meet and prepare a written agreement, stating the specific issue(s) to be submitted to arbitration. If the Parties fail to agree on a joint submission of the issue(s), each may submit a separate statement. The arbitrator may decide which Party's statement is appropriate, but shall not consider other issues not submitted by either Party.

Section 4

Consistent with this Article, the arbitrator shall decide the procedures to be followed in the hearing and deciding of the grievance. The arbitrator shall be asked to render a decision, as quickly as possible; but in any event, not later than thirty (30) calendar days after the conclusion of the hearing.

Section 5

The arbitrator is authorized only to apply the existing provisions of this Agreement to the specific facts involved; and to interpret applicable provisions of the Agreement. An arbitrator will not:

Mandate any abatement procedure involving the application of safety and health policies, regulations or standards (although the arbitrator may recommend or suggest such a procedure).

Section 6

Any arbitration hearing will normally be held at the Center during the regular day shift hours of the basic workweek. Employees who are called to testify as witnesses at a hearing shall be on official time if they are otherwise in an active duty status.

Section 7

The decision of the arbitrator is binding except that either Party may file an exception to the award with the Federal Labor Relations Authority as permitted by law and regulation.

Section 8

All fees and expenses of the arbitrator shall be shared (Management- 55% and Union -45%) by the Parties. If the arbitrator requests a transcript, such transcript will be included in the shared fees. If either Party requests a transcript, this cost shall be paid by the requesting party.

ARTICLE XXXIII

REDUCTION IN FORCE, REORGANIZATION AND TRANSFER OF FUNCTION

Section 1

In the event of a reduction in force and/or transfer of function occurs at BARC which involves Bargaining Union employees, Management will notify the Union and fulfill its obligation to bargain consistent with 5 USC 71.

Section 2

The Union will be notified in writing.

If an informational notice is issued, Management will provide the following information to the Union, at least fourteen (14) workdays before it issues the informational notice to employees:

- A. The nature of the RIF action being considered (e.g., transfer of function, abolishment of position.).
- B. The reason for the action.
- C. The anticipated effective date.

Section 3

If an informational notice has been issued, Management will provide the following information to the Union at least seven (7) workdays before it issues the specific notice to the employees work:

- a. types of positions;
- b. locations; and
- c. names of employees or changes to that list, should they occur .

If no informational notice has been issued, Management will provide the information to the Union at least thirty (30) workdays before it issues specific notices to employees.

Management will provide a specific notice of not less than sixty (60) calendar days to individual employees who will be affected by a reduction-in-force action.

Section 4

The Union agrees to keep all information under this Article confidential until such time as the employees receive their official notification.

ARTICLE XXXIV CONTRACTING OUT

Section 1

Management will inform the Union when it exercises its discretion to contract out work which is presently being performed by Bargaining Unit Employees.

When Management has decided to contract out work, it will notify the Union and provide to the Union, upon request, that information concerning the decision which is disclosable under the Freedom of Information Act.

Section 2

Upon receipt of notification of Management's decision to contract-out work, which is presently being performed by Bargaining Unit employees; the Union may, within ten (10) workdays, request negotiations concerning the impact on Bargaining Unit employees.

Upon timely request from the Union, the Parties shall meet and confer within ten (10) working days, concerning the impact upon Bargaining Unit employees.

ARTICLE XXXV CONCERTED ACTIVITY

Section 1

The Union agrees that it will not encourage, initiate, participate or condone strike, work stoppage or slowdown on the part of a Bargaining Unit employee or group of Bargaining employees. The Parties agree that stoppage or slowdown would harm or adversely affect the operations or missions of the Agency; and the Union will not condone such activity by failing to take affirmative actions to prevent or stop it.

Section 2

Management agrees that it will not lockout Bargaining Unit employees.

ARTICLE XXXVI INFORMATION AND PUBLICITY

Section 1

Copies of this Agreement shall be posted on the Agency website. The Union shall be furnished with an electronic copy.

Section 2

Management agrees to allow reasonable space for the posting of Union literature and material on presently designated official bulletin boards, as well as, the equipment to establish a website and website address for Union business.

Section 3

Management agrees to publish the names, work locations and telephone numbers of the Union President and stewards in the telephone directory as revised.

Section 4

The Union agrees to provide the Center a current list of the names, addresses and telephone numbers of its representatives.

Section 5

The Center will permit the Union to develop a Web site (site) for the purpose of providing employees information on matters such as Union programs, benefits and initiatives.

The Union will submit its information to be placed on the Center's employee Intranet pages in a MS Word document to the Center's Web Master for approval.

The Union will provide the Center's Web Master with the names of its representatives who may authorize information to the site.

The Union may use E-mail to communicate with employees. However, the Union will not use E-mail to communicate partisan political material.

ARTICLE XXXVII REPRODUCTION AND DISTRIBUTION OF AGREEMENT

Section 1

Copies of this Agreement shall be posted on the Agency website. The Union shall be furnished with an electronic copy.

Section 2

ARS shall provide equipment and supplies necessary for employees requiring special accommodations to be able to read or hear this Agreement. The Union shall provide readers to record this Agreement on audio tape. Such recording shall be done while on official time. The audio tape will be approved by the parties prior to distribution.

Section 3

It shall have a font size, not smaller than ten (10) point typeface.

It will have a table of contents and an index.

Every Section of every Article shall have a header.

ARTICLE XXXVIII CHANGES IN WORKING CONDITIONS

Section 1

Reorganization shall be handled pursuant to Addendum to this Agreement.

Section 2

Changes involving employee relocation and modification of work sites and hours other than reorganization shall be handled in accordance with Addendum to this Agreement.

Section 3

All other changes involving working conditions shall be governed by the following:

A proposed change, affecting the conditions of employment of any Bargaining Unit employee, will be submitted in writing by the Party (the Agency or the Union) to the other. The notice will include the following:

- a. description of the change or proposed change;
- b. an explanation of how the change will be implemented;
- c. the date of implementation or proposed implementation; and
- d. impact.

The other Party will respond to the notice of proposed change within ten (10) workdays of receipt of the notice. The other Party's response may include a request for information, briefing and/or negotiation without additional information or briefing.

The other Party will respond to the request for information or briefing, or both, within ten (10) workdays of receipt of the request. Requests for negotiation will be made within ten (10) workdays of receipt of information requested or completion of the briefing, and will be accompanied by proposals or counter proposals, as appropriate.

The Parties may mutually agree to extend the time limits described above.

With regard to the proposed change, the Parties shall bargain over all matters that are consistent with law and this Agreement.

Section 4

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

5. Impasse:
 - a. Neither Party may declare an impasse until all issues are agreed to or declared at an impasse by either Party. The Parties agree that each will use their best good faith efforts to avoid impasses in negotiations.
 - b. In the event either Party declares an impasse in negotiations, the Federal Mediation and Conciliation Service shall be immediately requested to provide services and assistance to resolve the dispute pursuant to 5 U.S.C. 7119.
 - c. If mediation service of the Federal Mediation and Conciliation Service do not result in resolution of the impasse, either Party may invoke the services of the Federal Service Impasses Panel pursuant to 5 U.S.C. 7119. Prior to taking such action, however, the Party seeking to invoke

the services of the Federal Service Impasses Panel will provide notice to the opposing Party of its intention to take such action.

Section 5

6. Negotiability Disputes:

If management believes a Union proposal is non-negotiable, it will raise the issue of negotiability in a timely fashion during the negotiation process. On request, the Union will be provided a written statement from Management asserting non-negotiability and the basis thereof. The Union may submit a negotiability petition to the FLRA in accordance with Federal Regulations.

ARTICLE XXXIX DUES WITHHOLDING

The allotment of dues through payroll withholding, including the overall procedures and costs for affecting the allotment, shall be subject to and in accordance with the current Memorandum of Understanding between the U.S. Department of Agriculture and the American Federation of Government.

ARTICLE XL DURATION

Section 1

The effective date of this Agreement, and any supplement or amendment thereto, shall be the date of its approval by the Agency Head. If the head of the Agency does not approve or disapprove the agreement within the thirty (30) day period, the agreement shall take effect and shall be binding on the Parties subject to the provisions of 5 USC 71 and any other applicable law, rule or regulation.

Section 2

This Agreement shall be in full force and effect for a period of three (3) years from the date of its approval. Either Party may give written notice to the other, not more than ninety (90) calendar days or less than sixty (60) calendar days prior to the three (3) year expiration date for the purpose of renegotiating this Agreement. Upon such notice, negotiations shall commence, not later than thirty (30) calendar days prior to the expiration date, except by mutual consent when either party presents written notice of scheduling problems. If neither party serves notice to renegotiate this Agreement, the Agreement shall be automatically renewed for additional one (1) year periods subject to the other provisions of the Article. The specific changes proposed shall be included in the written notice.

Section 3

Upon approval, this Agreement will supersede and cancel all previous formal and informal agreements, and will serve as the sole Agreement between parties.