

NEGOTIATED AGREEMENT
BETWEEN
THE ADJUTANT GENERAL, STATE OF HAWAII
AND
THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 882

For a bargaining unit consisting
of non-supervisory employees of
the Hawaii Army National Guard

MEMORANDUM OF AGREEMENT
BETWEEN
THE ADJUTANT GENERAL, STATE OF HAWAII
(THE EMPLOYER)

AND
THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 882
(THE UNION)

SUBJECT: Administrative Modification of Negotiated Agreement

1. Purpose. This agreement provides administrative relief for the Employer in processing letters of reprimand affecting members of the bargaining unit.
2. Reference. Article XXI, Section 1, of the negotiated agreement between the Adjutant General, State of Hawaii and the American Federation of Government Employees, Local 882, pertinent to non-supervisory employees of the Hawaii Army National Guard as approved 13 February 1979.
3. Problem. That portion of the negotiated agreement referred to above requires the processing of letters of reprimand in the same manner as suspensions and removals. Letters of reprimand are appropriately categorized as disciplinary actions. Suspensions and removals are adverse actions. Understandably, adverse actions warrant more formal procedures requiring issuances of proposed notices of action, reply periods, notices of original decision, effecting actions, and appeal processes. Such procedures are cumbersome and redundant for letters of reprimand.
4. Scope. It is agreed that letters of reprimand will no longer be processed like adverse actions.
5. The undersigned agree that letters of reprimand will be processed in compliance with National Guard Technician Personnel Regulation (TPR) 752, Chapter 1, paragraph 1-3, dated 23 February 1987. An extract copy of the directive is enclosed.
6. Effective date. This agreement will become effective when signed by both the Employer and the Union.

Encl

FOR THE EMPLOYER:

FOR THE UNION:

[Redacted Signature Area]

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement by and between the Adjutant General, State of Hawaii (for the Hawaii Army National Guard) herein after referred to as the Employer, and Local 882 of the American Federation of Government Employees, AFL-CIO, herein after referred to as the Union, constitutes the basis of settlement for a new negotiated Agreement pursuant to Section 2 of Article XXVIII (Duration of Agreement).

It is further understood and agreed that terms and conditions of the Agreement approved by the National Guard Bureau on 14 July 1975 shall be incorporated into the new Agreement except as amended below:

- a. Article V - Rights of the Union.
- b. Article VII - Union Representation.
- c. Article VIII - Hours of Work and Tours of Duty.
- d. Article XVI - Uniforms and Protective Clothing and Equipment.
- e. Article XVII - Safety and Health.
- f. Article XXV - Employer-Union Communication.
- g. Signature Page.

The terms of the Agreement approved by the National Guard Bureau on 14 July 1975 shall remain in effect until the new Agreement is approved by the National Guard Bureau.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Agreement to be executed this 9th day of January 1979.

FOR THE EMPLOYER:

FOR THE UNION:

FOR THE HAWAII ARMY NATIONAL GUARD:

APPROVED: 13 FEB 1979

FOR THE CHIEF, NATIONAL GUARD BUREAU

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PREAMBLE

This Agreement is made by and between the Adjutant General, State of Hawaii, hereinafter referred to as the Employer, and Local 882 of the American Federation of Government Employees, AFL-CIO, hereinafter referred to as the Union.

WITNESSETH

WHEREAS Executive Order 11491 as amended provides for greater employee participation in formulating and implementing the personnel policies and practices and other matters affecting the conditions of their employment in order to contribute to the effective conduct of public business; and

WHEREAS in furtherance of the above principle and the desire of both the Employer and the Union to foster labor-management cooperation in such matters of mutual concern and interest as the well-being of the employees in the unit as an aid in accomplishment of the mission of the Employer, the parties hereto agree as follows:

ARTICLE I

RECOGNITION AND UNIT DETERMINATION

SECTION 1. The Employer recognizes the Union as the exclusive representative of all non-supervisory, non-managerial, and non-professional employees in the Hawaii Army National Guard (Statewide) to which this Agreement applies.

SECTION 2. The term "employee" means competitive and excepted technicians employed under the provisions of Section 709 of Title 32, United States Code, to perform the following functions:

- a. The administration and training of the National Guard; and
- b. The maintenance and repair of supplies issued to the National Guard or the Armed Forces.

ARTICLE II

PRECEDENCE OF LAW AND REGULATIONS

SECTION 1. 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 the Federal Personnel Manual; 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 OF THE EMPLOYER

SECTION 1. It is recognized that management officials retain the right, in accordance with applicable laws and regulations, (a) to direct employees of the agency; (b) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees; (c) to relieve employees from duties because of lack of work or for other legitimate reasons; (d) to maintain the efficiency of the Government operations entrusted to them; (e) to determine the method, means, and personnel by which such operations are to be conducted; and (f) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency.

SECTION 2. In exercising authority to make rules and regulations relating to personnel policies and practices and working conditions, the Employer shall give due regard to the obligations imposed by this Agreement, by Executive Order 11491 as amended, and by established past practices. While nothing in this Agreement shall prevent the changing or modifying of an established past practice, the Employer agrees that such action on matters subject to this Agreement and Executive Order 11491 as amended shall not be taken without prior consultation or negotiation with the Union. The obligations stated above shall not be construed to extend to such matters as the mission of the Employer; the budget; the organization; the number of employees; the number, types and grades of positions and employees assigned to an organizational unit, work project or tour of duty; the technology of performing the work; or internal security practices.

ARTICLE IV

RIGHTS OF THE EMPLOYEE

SECTION 1. The Employer and the Union agree that employees shall have, and shall be protected in the exercise of, the right to freely and without fear of penalty and reprisal, to form, join and assist any employee organization or to refrain from such activity. The right to assist such an organization shall extend to participation in the management thereof and acting as a representative of the organization except where such participation or activity would result in a conflict of interest or otherwise be incompatible with law or with the official duties of the employee.

SECTION 2. The Employer agrees to take action necessary to assure and inform employees of their rights under this Article and to ascertain that no interference, restraint, coercion or discrimination is practiced by any management official to limit or impair these rights.

SECTION 3. The Employer agrees to advise employees, in writing, of their constitutional rights to obtain counsel prior to any interview, interrogation or other proceedings conducted by any Employer-appointed investigator or investigative body when the Employer has reason to believe that such proceedings may lead to the initiation of criminal charges against the employees. The Employer further agrees that threats of job dismissal shall not be used to coerce employees to answer questions that might be self-incriminating. The rights of employees under this Section relative to the use of polygraphs (lie detectors) shall be in accordance with DOD Instructions 5210.48 series, or other applicable procedures.

SECTION 4. Nothing in this Agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to that organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deduction.

ARTICLE V

RIGHTS OF THE UNION

SECTION 1. The Employer agrees to give the Union adequate advance notice and the opportunity to negotiate on any proposed changes in personnel policies and practices and matters affecting working conditions in the unit within the provisions of Sections 11 and 12, Executive Order 11491, as amended. This notification shall be given to the Chief Steward or the Business Manager. Should the Union respond with a request for the proposal in writing, if otherwise submitted, a stay on implementation pending study by the Union or negotiation on the matter shall follow. Such response must be given within three working days following the notification. No change(s) shall be made unless agreed upon by the parties; or resolved by third party proceedings.

SECTION 2. It is recognized that changes in law or regulations of appropriate authorities may necessitate changes in personnel policies, practices or other matters affecting working conditions. If the change leaves the Employer no discretion in the matter, the Union shall be consulted regarding the implementation of the change. When the law or regulation leaves administrative discretion to the Employer, any proposed change in these discretionary areas will be negotiated between the parties within the provisions of Sections 11 and 12, Executive Order 11491, as amended.

SECTION 3. The Union shall be given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit in accordance with the provisions of Section 10e, Executive Order 11491, as amended.

ARTICLE VI

MATTERS APPROPRIATE FOR CONSULTATION OR NEGOTIATION

SECTION 1. It is agreed that matters appropriate for consultation or negotiation between the Employer and the Union are policies, programs and procedures relating to personnel matters and working conditions which are within the authority of the Employer including, but not limited to, such matters as labor-management cooperation, promotion plans, hours of work, leave, safety, training, methods of adjusting grievances, appeals, reduction in force practices, and employee services.

ARTICLE VII

UNION REPRESENTATION

SECTION 1. The Employer agrees to recognize the officers, stewards and duly designated representatives of the Union and assure that all levels of management shall accord them respect, dignity and courtesy as appropriate. The Union shall furnish and maintain with the Employer a current list of all stewards, listing the group of employees and work area each steward is assigned to represent. The Employer further agrees to the appointment of the number of stewards for the areas and/or activities designated hereafter:

<u>Number</u>	<u>Title</u>	<u>Activity and/or Location</u>
1	Chief Steward	Hawaii Army National Guard-wide
1	Steward	Wheeler AFB
1	Steward	Wahiawa (excluding Wheeler AFB)
1	Steward	Pearl City
1	Steward	All OMSs, Fort Ruger
1	Steward	CSMS #1, Fort Ruger
1	Steward	USPFO, Fort Ruger
1	Steward	All 29th Inf Bde and HIC units, Fort Ruger, Kaneohe, Waimanalo
1	Steward	All other activities at Fort Ruger not previously covered
1	Steward	Island of Hawaii
1	Steward	Island of Maui
1	Steward	Island of Molokai
1	Steward	Island of Kauai

SECTION 2. The steward must be an employee in an activity or location which he represents and will lose his right of representation as a steward when he is transferred or relocated to another activity and/or location.

SECTION 3. The Employer agrees to afford stewards and duly designated representatives who are employees with a reasonable amount of time during duty hours to conduct representational duties with appropriate management officials and/or aggrieved employees. Stewards and designated representatives will secure permission for such absence from their immediate supervisors, indicating the nature of the business to be conducted and the approximate period of absence. The steward or representative will provide the supervisor with sufficient information to make a determination that the matter is appropriate. The Employer reserves the right to determine the duration and specific duty hours that representational duties will be conducted. Stewards and representatives will report to the appropriate supervisor when entering and leaving a work location on official Union business, and will report to their immediate supervisor upon return to their own work area.

SECTION 4. The Union agrees that all activities concerning the internal management of its organization, membership meetings, soliciting of membership, collection of dues, campaigning for office, conduct of elections, and distribution of literature for organizing purposes will be conducted outside of regular working hours.

SECTION 5. The Employer agrees that Union representatives will not suffer discrimination or retaliation because of participation in legitimate Union activities. Under normal circumstances, designated stewards and Union representatives shall not be transferred without prior notification to the Union. However, the Employer reserves the right to make such transfers under abnormal or emergency circumstances without prior notification and agrees to promptly notify the Union of such transfers.

SECTION 6. The Employer agrees that each new employee in the unit will be advised by his supervisor as to the name of his designated steward within the first two weeks after employment.

ARTICLE VIII

HOURS OF WORK AND TOURS OF DUTY

SECTION 1. The Employer agrees that the basic workweek for all employees in the unit will consist of five (5) consecutive 8-hour workdays, Monday through Friday, with a 45-minute lunch period. Changes in the work hours and/or workweek shall be a matter for negotiation between the parties in accordance with Article V of this Agreement. Those limited numbers of employees whose duties must be performed during hours outside of the regular work hours and tours of duty may be assigned for short durations to those work hours or tours of duty necessary to accomplish the work.

SECTION 2. When implementing any approved changes in the days or hours of work of an employee's basic workweek, the employee shall be notified of such change at least seven calendar days prior to the start of the first administrative workweek in which the change will take place.

SECTION 3. The Employer agrees that, unless an emergency situation arises which would warrant employees to work on their scheduled lunch period, lunch periods shall be granted as scheduled, and employees shall not be required to perform duties during this period. When employees are required to work on their regular scheduled lunch period to meet emergency needs, lunch periods will then be granted immediately after the emergency situation has been corrected.

SECTION 4. The Employer agrees that rest periods of not more than 15 minutes duration during each 4 hours of continuous work shall be granted employees of the unit within the following criteria and policy established by the National Guard Bureau: (a) Protection of technicians' health by relief from hazardous work or that which requires continual and/or considerable physical exertion; (b) Reduction of accident rate by removal of fatigue potential; (c) Working in confined spaces or in areas where normal personal activities are restricted; (d) Increase in, or maintenance of, high quality and/or quantity production traceable to the rest period.

SECTION 5. The Employer agrees to permit adequate cleanup time before lunch and prior to the end of the shift for employees who have been handling toxic or hazardous substances or who have been subjected to excessive soil of body or clothing. The Employer also agrees to permit reasonable time at the start of the shift to draw necessary tools and

equipment and reasonable time prior to the end of the shift to turn in such items. Cleaning up the work area and equipment shall be accomplished prior to the end of the shift.

ARTICLE IX

OVERTIME

SECTION 1. Overtime shall be restricted to work which is administratively uncontrollable and shall be limited to the maximum extent possible.

SECTION 2. When overtime work is required, the Employer shall assign such work based on the skill, ability, attendance record, job performance and availability of employees. Within such considerations, overtime work will be assigned fairly and equitably among all employees in the organizational segment in which such overtime is required. Employees assigned to overtime work shall be given as much advance notice as possible. An employee who requests to be released from an overtime work assignment shall be so released provided another qualified employee is available.

SECTION 3. No employee in the unit shall be required to work more than a maximum of 16 hours overtime per pay period, except when necessary to meet an unavoidable production schedule. The Employer shall make every effort to prevent abuses of this exception.

SECTION 4. When an employee is called back to perform overtime work, the employee shall be given a minimum of two hours compensatory time, whether the work is performed or not.

SECTION 5. Compensatory time off shall be scheduled by the employee with the supervisor and normally must be utilized within the four pay periods following the pay period in which it was accrued. Failure to so utilize such time off for reasons beyond the control of the employee will not warrant forfeiture of accrued compensatory time.

SECTION 6. Overtime records shall be maintained by the immediate supervisor and may be reviewed by the Union steward or employee concerned.

14 July 1975

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ARTICLE X

ANNUAL LEAVE

SECTION 1. The Employer agrees to establish, post and, insofar as possible, adhere to a leave schedule which will permit each employee two consecutive weeks of annual leave during the year. Employees will be consulted in the establishment of such schedule and full consideration will be given to each employee's desired leave periods with preference to those leave requests necessitated by military commitments or childbirth; provided, however, that the Employer may make any adjustment to the schedule required to meet workload requirements. When such an adjustment becomes necessary, affected employees will be given as much advance notice as possible. The provisions of this Section shall not preclude employees in the same rating and work area from exchanging their scheduled leave periods by mutual consent. The supervisor will normally approve such changes.

SECTION 2. The Employer agrees that employees' requests for annual leave, if made prior to the day on which leave is desired, will normally be granted if workload requirements permit. The Employer agrees to maintain a liberal leave policy in circumstances such as, but not limited to, death or illness in the employee's immediate family, religious observances.

SECTION 3. Whenever the need to limit the number of employees granted annual leave during a particular period of time arises, due consideration will be given to such factors as the operating needs, the skills of employees, length of time since last vacation period and the length of Federal service. Where all other factors are relatively equal, the employee with the greatest length of creditable service will be given preference for the desired period.

SECTION 4. The Employer will make every effort to avoid a forced leave situation. However, if forced leave becomes necessary for any reason or a liberal leave policy is established, the Employer will make every effort to find work for employees not having any annual leave to their credit. If no such work is available, the Employer agrees to grant advance annual leave, not to exceed five days, within the policies established. Should forced annual leave be required, the Employer agrees to notify the Union as far in advance as possible and to consult with the Union concerning the method of implementing the forced leave.

ARTICLE XI

SICK LEAVE

SECTION 1. Employees shall be granted sick leave upon proper notification to their supervisor, except under extenuating circumstances, (a) when they are unable to perform their regular duties because of sickness, injury, or hospitalization; (b) for medical, dental, or optical examination or treatment; (c) when a member of the immediate family of the employee is afflicted with a contagious disease and requires the care and attendance of the employee, or when, through exposure to contagious disease, the presence of the employee at his post of duty would jeopardize the health of others; (d) for hospitalization or incapacitation beyond the initial training period when injury is incurred or disease is contracted while engaged in military duty, even though entitlement to military pay and allowances exists for the same period.

SECTION 2. Employees may be granted advance sick leave, not to exceed thirty days, in cases of serious illness or disability, providing that such requests are supported by a medical certificate and all available accumulated sick leave will have been exhausted and excess annual leave that would otherwise be forfeited is used, and subject to a reasonable expectation of the return to duty of the employee. The granting of such sick leave shall not be denied because the employee has annual leave to his credit.

SECTION 3. A medical certificate will not be required in support of an application for sick leave of three workdays or less. However, such a certificate may be required in individual cases if the Employer has adequate reason to believe the employee is misusing the sick leave privilege. In such cases the employee shall be advised orally that his sick leave record is questionable and advised that if his record does not show improvement within a specified period of time, not to exceed six months, he will be required to substantiate all future requests for sick leave due to claimed illness regardless of duration. If this does not result in the necessary improvement, the employee will be advised in writing that all future requests for sick leave must be supported by a medical certificate. This written notice will also fully explain why the employee is suspected of misusing the sick leave privilege. The requirement for a medical certificate will be reviewed at least semi-annually and will be rescinded in writing when the employee's sick leave record warrants.

SECTION 4. Employees who fail to submit a medical certificate as provided by this Agreement will determine whether such absences will be charged to annual leave or leave without pay.

ARTICLE XII

LEAVES OF ABSENCE

SECTION 1. The Employer agrees that employees may be granted leave without pay on the condition that there is reasonable expectation that the employee will return to duty at the end of the approved period. Leave without pay shall not exceed one year for each application.

SECTION 2. It is recognized that the improvement of a Union representative's capabilities in that capacity will benefit the Federal service as well as the Union. Therefore, the Employer agrees to grant annual leave and/or leave without pay when an employee in the unit has been elected or appointed to a Union office or as a delegate to any Union activity requiring leave of absence unless such absence would seriously hamper the accomplishment of the mission of the Employer.

SECTION 3. It is agreed that an employee on leave without pay shall receive and retain all rights and privileges authorized under governing laws and regulations. It is further agreed that such employees on leave shall be officially notified in writing of any significant matters which will affect them to the same extent as provided other employees who are on leave. The official responsible for rating the employee (NGB Form 2) will be responsible for informing the employee of such matters.

ARTICLE XIII

HOLIDAYS

SECTION 1. Holidays will be observed as non-workdays, unless unforeseen contingencies require an employee to work on a holiday. Whenever an employee entitled to holiday benefits is required to work on a holiday, he shall receive such benefits as provided in appropriate National Guard regulations.

SECTION 2. The Employer agrees to give as much advance notice as possible to employees required to work on a holiday.

SECTION 3. Consistent with workload and manpower requirements, assignment of employees to work on a holiday shall be kept to the minimum extent possible.

ARTICLE XIV

POSITION CLASSIFICATION AND JOB GRADING

SECTION 1. The Employer agrees to permit the Union to review and comment on proposed Civil Service Commission classification and job grading standards for positions in the unit on which comments are requested by higher headquarters, and to advise the Union when any changes in such standards will affect employees in the unit.

SECTION 2. Any employee in the unit who believes that his position is improperly classified or graded may discuss the matter with his supervisor who will, upon request, arrange for review of the employee's classification or grading by appropriate specialists from the servicing personnel office. The review shall include discussions with the employee and the supervisor to determine the employee's actual, regular work assignments over a representative current period of time and comparison of such assignments with the applicable position classification or job grading standards. The employee and the supervisor will be advised verbally of the results of the review. If the employee is dissatisfied, he shall be advised of the procedure and time limits (if applicable) for appealing the classification or job grade of his position.

ARTICLE XV

FACILITIES AND PUBLICITY

SECTION 1. The Employer agrees to provide reserved designated space on bulletin boards where mutually deemed appropriate within the unit for the purpose of posting Union notices and similar informational material. The Union will be responsible for posting and removing material and for maintaining its bulletin board space in orderly condition.

SECTION 2. The Employer agrees that, when circumstances warrant, official Union matters which are pre-packaged and addressed may be disseminated throughout the unit on Oahu via the Employer's message center system, subject to regulations and other pertinent factors. It is agreed and understood that the use of the message center system does not extend to matters concerning the internal management or operations of the Union. Permission to use the message center system for disseminating Union information must be obtained in advance from the Civilian Personnel Officer.

SECTION 3. The Employer agrees to make available appropriate facilities, including utilities, for Union meetings outside of regular working hours when such scheduling does not conflict with training and schedules of the tenant unit. The Union agrees that use of such facilities will be subject to the fees and custodial arrangements normally assessed for such use.

ARTICLE XVI

UNIFORMS AND PROTECTIVE CLOTHING AND EQUIPMENT

SECTION 1. Except as indicated in Section 2, technicians may wear Aloha attire on Fridays and during Aloha Week. Aloha attire is defined to mean a garment (shirt or dress) of Polynesian print that is consistent with the spirit and intent of the traditional Aloha Fridays and Aloha Week. Shoes will be worn. Trousers will be full length and skirts/dresses will be knee-length or longer.

SECTION 2. The military uniform will be worn when participating in the following activities:

- a. When serving as a crew member, noncrew member, or passenger on a military aircraft.
- b. When participating in ceremonies or activities requiring the wearing of the uniform.
- c. When attending a military service school in a technician status.
- d. When performing official duties as an operator or passenger in a military vehicle.

SECTION 3. The Employer agrees to furnish appropriate protective clothing and/or equipment to employees performing work which requires such protective measures.

ARTICLE XVII

SAFETY AND HEALTH

SECTION 1. The Employer will make every reasonable effort to provide and maintain safe working conditions and to comply with applicable Federal laws and regulations relating to the safety and health of employees. Each supervisor shall take prompt and appropriate action to correct, or report to the appropriate management official, any unsafe condition or action which is reported to or observed by him.

SECTION 2. In order that the Union will have an opportunity to join with the Employer in a joint effort to insure that safety is practiced throughout the unit, the Union shall have a member of the unit on any Safety Committee established or appointed by the Employer.

SECTION 3. The Union recognizes that the observance of safe work practices and the wearing of prescribed protective clothing is primarily the responsibility of each individual. All employees will observe safe working practices, wear protective clothing and/or equipment prescribed by the Employer, and promptly correct or report any unsafe conditions or acts.

SECTION 4. Medical examinations required by the Employer and treatment for on-the-job injuries will be provided in accordance with appropriate regulations. In those cases where an employee is compelled to leave his/her place of employment due to serious illness or injury and has no transportation or is incapacitated, the Employer shall arrange transportation to enable the employee to reach his/her abode or medical facility for treatment.

ARTICLE XVIII

EMPLOYEE UTILIZATION

SECTION 1. The Employer agrees that employees will be fully utilized for work appropriate to their job or position and at a level commensurate with their pay, except when the Employer finds it necessary to temporarily detail or assign employees to other duties or positions. The Employer agrees to minimize such details.

SECTION 2. The Employer agrees that assignment of other duties to employees in the unit shall be made only if such duty is directly related to the position for which they are employed, unless circumstances dictate otherwise. Temporary assignments shall be of a nature that closely associates them with that of the employee's normal duty and pay level, unless compelling circumstances exist. In all cases, such temporary assignments will be kept to a minimum, and an attempt will be made to meet these needs on a voluntary basis. The Employer further agrees to take into consideration when making these assignments the employee's health and ability to perform the duties of the position. The Employer and the Union support and encourage participation in civic and community programs.

SECTION 3. The Employer agrees that utilization of employees to participate at military funeral ceremonies as members of firing squads and/or active pallbearers shall be limited to funeral services for members of the Armed Forces, provided that such ceremonies are conducted during the normal work hours and will not extend beyond the end of the normal workday without the concurrence of the employee.

SECTION 4. The Employer and the Union recognize that employees who are members of the National Guard are an essential force in rescue or protection work in connection with floods, fires, or other acts of God, and in performing emergency duty in connection with civil disturbances; therefore, they support utilization of employees for these purposes.

ARTICLE XIX
PROMOTION AND DETAILS

SECTION 1. The Employer agrees that all vacancies are to be filled on the basis of merit and efficiency with the objective of selecting from among the best qualified persons available. Such selections shall be made under systematic and equitable procedures as provided in this Agreement as well as the Employer's regulations. The Employer agrees that, in order to fully utilize the skills and potential of all employees, and in the best interest of the morale of all employees, the area of consideration for promotions to vacancies will be Statewide and include all employees who are eligible and qualified.

SECTION 2. The Employer may fill vacancies by reassignment or transfer between positions at the same grade level without competition or by non-competitive promotion as provided in Chapter 3, TPP 911. The Employer agrees to require the posting of notices of vacancies on appropriate bulletin boards for a period of not less than five working days when competitive placement actions are utilized to fill vacancies. When the selecting official does not select any of the qualified applicants, the official shall state the reasons for his action on the promotion certificate.

SECTION 3. The Employer agrees that when a personal interview is a criterion to selection for promotion to fill a vacancy, a personal interview of each referral on the promotion certificate shall be made by the selecting official prior to making a selection, except when a candidate was previously interviewed for a similar promotion by the same official within a 90-day period immediately preceding the current promotion action.

SECTION 4. An employee (competitive or excepted) who is demoted without personal cause will be entitled to special consideration for repromotion. Although, he is not guaranteed repromotion, ordinarily, he should be repromoted when a vacancy occurs in a position at his former grade (or any intervening grade) for which he is eligible and has demonstrated that he is well qualified, unless there are persuasive reasons for not doing so. If a selecting official considers an employee entitled to special consideration for repromotion, but does not select him and then the employee is referred as one of the best qualified under competitive promotion procedures for the same position and again is not selected, the official must state his reasons for the record in writing and furnish the employee a copy. The Employer will determine who is to be repromoted. The provisions of this section do not apply to a demotion initiated at the request and for the convenience of the employee.

SECTION 5. The Employer agrees that, at the request of an employee who was referred for consideration for a particular vacancy but was not selected, the employee and/or designated representative will be permitted to review the promotion or selection procedures utilized, except for procedures and material of a confidential nature. The employee will be

counseled whenever possible as to ways in which he might improve his chances for selection in the future. It is further agreed that candidates may review any supervisory appraisal made of their past performance and considered in the current promotion action. The Union recognizes that selecting officials are not required to justify their selection to non-selected candidates.

SECTION 6. The Employer agrees to temporarily promote eligible and qualified employees within the unit who are directed to perform the duties of higher level positions for 30 days or more; however, in those cases where the incumbent of a position is absent in a non-pay status or the position is vacant pending filling of the position and a qualified and eligible employee is assigned to perform the major duties of the temporarily vacant position, he shall be temporarily promoted for the non-pay status period or the position vacancy period in accordance with the Employer's Merit Promotion Plan. The Employer agrees to process these temporary promotions expeditiously.

SECTION 7. The Employer recognizes the basic principle that an employee should be assigned to duties of the position in which he is employed. However, to meet temporary workload requirements when necessary services cannot be obtained by temporary promotion or other means, employees may be detailed to other positions. If a detail is made for the purpose of training or evaluating a possible successor to a position which is or is about to become vacant, the Employer agrees that such detail shall be made in accordance with the Merit Promotion Plan. Details of 30 calendar days or longer will be documented in the employees' personnel folders. In cases of intermittent details of less than 30 days, the assignment shall be rotated among all qualified employees and the cognizant supervisor shall keep a record of such details for consideration when considering employees for promotion.

ARTICLE XX

REDUCTION IN FORCE

SECTION 1. The Employer agrees to notify the Union of directed or proposed reductions in force affecting employees in the unit as far in advance as possible, giving the reasons for the reduction. When information concerning the date the action is to be taken, the number of employees involved and the competitive levels to be affected is known, this information shall also be provided to the Union as expeditiously as possible. The Union shall be invited to discuss and present its views to the Employer for consideration.

SECTION 2. All reductions in force shall be carried out in accordance with applicable laws and regulations. The Employer agrees that, in order to minimize the impact of a reduction in force, existing vacancies will be filled to the extent possible through placement of qualified employees who might otherwise be adversely affected by the reduction in force action.

SECTION 3. The Employer agrees that, at the time a reduction in force is announced, all promotions to positions known to be affected by the action will be held in abeyance until a review of the records of all affected employees has been made, placement rights determined, and reduction in force notices issued.

SECTION 4. The Union agrees to render assistance in communicating to employees the reasons for any reduction in force.

ARTICLE XXI

DISCIPLINARY ACTIONS AND APPEALS

SECTION 1. The Employer agrees that disciplinary actions will only be taken for just and sufficient cause and will normally be initiated only after informal methods, such as counseling, warning, or oral admonishment, have failed and an investigation indicates that formal action is necessary. Such investigation shall include an informal discussion with the employee, at which time he will be permitted to present his side of the matter. If in the process of the informal discussion the supervisor determines that there is sufficient cause to impose formal disciplinary action, he will suspend the discussion and permit the employee to obtain appropriate counsel or representation, unless the supervisor deems it urgent that immediate corrective action be taken. At the conclusion of the discussion the employee will be informed as to whether or not the matter will be dropped. In the event the matter is not terminated and formal disciplinary action (written reprimand, suspension, and removal) is considered, the employee will be issued a written notice of the proposed action in which he will be advised of his right to reply orally or in writing, or both, within 7 calendar days after the discussion. The employee will also be advised of his right to be represented by the Union, a person of his own choosing, or by himself, whichever the situation may apply. A copy of the notice shall be furnished to his representative. A letter of decision will be provided the employee at the earliest practicable date.

SECTION 2. An employee who is made the subject of a disciplinary action will be advised of his right to appeal the action, the procedure to follow, and the time limit for filing the appeal. He will be advised that adverse actions, that is, removal, suspension, furlough without pay, and reduction in rank or pay, may be appealed in accordance with applicable regulations or through the provisions of Article XXIII of this Agreement. Appeals of letters of reprimand will be submitted as provided in Section 6, Article XXII.

SECTION 3. In the event the employee decides not to apply the negotiated procedure, or does not select the Union to represent him, the Union is entitled to have an observer at any formal hearing on a disciplinary action not within the meaning of adverse action as defined in the previous Section. This will likewise apply at any adverse action appeal hearing, provided that the employee does not object to the presence of a Union representative, and if he does object, the hearing examiner will make the decision on the question of the Union's presence.

SECTION 4. When the Employer determines that the employee's continued presence at work constitutes a serious detriment to life, government

property, government interests, or to himself and other employees, the employee may be suspended from duty by separate action until a final decision is made on the appeal.

ARTICLE XXII

GRIEVANCE PROCEDURE

SECTION 1. This Article provides for an orderly method for the prompt and equitable settlement of employee or Union grievances over the interpretation or application of this Agreement and of agency policies and regulations. It is the sole procedure that may be used by the parties to this Agreement and the employees in the unit in processing such grievances. This Article may also be used to resolve grievances involving employee dissatisfactions over some aspect of the employment relationship or working condition which is beyond the control of the employee but within the control and authority of the Employer. Notwithstanding the provisions of this Section, this procedure shall not be used to process such matters for which a statutory appeal procedure exists or when it is in conflict with statute or Executive Order 11491, as amended; nor will this procedure be applicable to any matter which limits or impairs management's rights contained in Article III, or involves the expenditure of unprogrammed funds and resources, or requires changes to established policies and procedures.

SECTION 2. In the event of disagreement as to whether or not a grievance can be processed under this grievance procedure, or is subject to arbitration under this Agreement, the parties may singularly or jointly submit the matter to the Assistant Secretary of Labor for Labor-Management Relations for a determination. On singular referrals, the other party shall be furnished a copy of the referral.

SECTION 3. Most grievances arise from misunderstandings or disputes which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level. The Employer and the Union agree that every effort will be made to settle grievances at the lowest possible level; therefore, the parties urge that employees discuss their problems with their immediate supervisors on a person-to-person basis first before calling upon the services of a Union representative.

SECTION 4. The following procedure will be followed in processing any grievances to which this Article applies:

Step 1. The grievance shall first be taken up orally by the concerned employee and steward with the appropriate supervisor who has discretion in the matter. Grievances must be submitted within 15 calendar days from the date the employee or the Union became aware of the action or event which led to the grievance. At every step of the grievance the employee is entitled to Union representation; however, if he is presenting his grievance directly to management for adjustment consistent with the terms of Agreement without the intervention of the Union, the Union shall have the right to be present at the adjustment. The supervisor shall advise the grievant of his decision within 3 working days.

Step 2. At this Step the grievance must be submitted in writing to the next appropriate supervisory level within 7 calendar days following receipt of the Step 1 decision. The grievance letter must identify the specific nature of the grievance, why the Step 1 decision is not acceptable, and the remedy desired. Within 3 working days after receipt of the grievance, the supervisor will meet with the grievant, the designated representative, and other appropriate persons. Within 3 working days after the meeting, the supervisor shall render his decision in writing to the grievant with a copy to the Union. If the decision is not satisfactory it shall be submitted to Step 3 of this procedure within 15 calendar days after receipt of the decision.

Step 3. This level of the procedure shall be used for submission of Union initiated grievances and for employees to have their grievances referred to arbitration. The Union will submit a letter to the Employer advising that arbitration is being invoked and requesting that the parties meet to arrange for an arbitrator. The letter will contain a brief statement of the nature of the grievance, why the Step 2 decision (if applicable) was not acceptable, and what remedial action is sought. If, upon receipt of the letter, the Employer decides to adjudicate the issue in favor of the grievant or modifies the Step 2 decision (if applicable) to the satisfaction of the grievant, the grievance will not be referred to arbitration.

SECTION 5. It is agreed that at any step of the negotiated grievance procedure and at any arbitration proceedings, the Union may request the attendance of a reasonable number of relevant witnesses. Such witnesses, if employees, shall not suffer any loss of pay or leave while testifying during scheduled tours of duty. It is further agreed that all time limits established herein may be extended for good cause and upon written notification prior to the end of the prescribed time limits.

SECTION 6. Grievances resulting from letters of reprimand will be submitted to the supervisor of the official who made the original decision, provided that official is not the Employer, in which case the grievance will be submitted directly to arbitration.

SECTION 7. Nothing in this Agreement shall be so interpreted as to require the Union to represent an aggrieved employee in his grievance, or to continue to represent him if the Union considers the grievance to be invalid or without merit. This Article shall not be construed in any manner to diminish or impair any rights which would otherwise be available to an employee in the Unit, including the right of the employee to further process a grievance filed under this procedure if the Union exercises its right to withdraw, except that the employee shall not have the right to request arbitration.

SECTION 8. If, at any step of the grievance procedure set forth above, the grievant decides to accept the decision of the deciding official but the Union feels that a significant issue of general application still requires resolution, the Union may pursue the matter as a separate action if it is applicable under the provisions of this Article.

ARTICLE XXIII

ADVERSE ACTION APPEALS

SECTION 1. This Article provides for advisory arbitration in connection with an appeal from an adverse action (removal, demotion, suspension, reduction in rank or compensation, or furlough without pay) taken against an employee in the unit. The provisions of this Article do not apply to employees who are serving probationary or trial periods, and temporary or limited term appointments; or to adverse actions resulting from changes in military status as a military member of the National Guard.

SECTION 2. Upon receipt of a decision to take adverse action, the employee may elect to appeal through the established Employer's appeal channel or through the procedure set forth in this Article. If the employee elects to appeal under the provisions of this Article, he shall submit a written appeal to the State Adjutant General at any time after receipt of the decision but not later than within 15 days of the effective date of the adverse action. The appeal must be accompanied by a letter from the Union concurring in the use of advisory arbitration. The letter of appeal should state the basis for the appeal, the corrective action desired and any additional information deemed pertinent.

SECTION 3. If the employee requests, and the Union concurs in the referral of the appeal to advisory arbitration, the procedures set forth in Article XXIV, Arbitration, shall be followed.

SECTION 4. The decision rendered by the State Adjutant General following receipt of the arbitrator's award on the appeal represents the final level of appeal. The letter of decision, if not granting the appeal, shall inform the appellant of the reasons for the decision and that he has exhausted his appeal rights within the Civil Service system. A copy of the decision shall be furnished to the Union.

ARTICLE XXIV

ARBITRATION

SECTION 1. The following procedure shall be followed whenever a matter is submitted to arbitration in accordance with the provisions of this Agreement. Arbitration in connection with appeals of adverse actions as defined in Section 2, Article XXI, shall be advisory in nature. Arbitration of all other grievances filed under the negotiated grievance procedure shall be binding on the parties; however, either party may file exceptions to an award with the Federal Labor Relations Council under regulations prescribed by the Council. The provisions of Title 32, United States Code, Section 709e, are expressly excluded from binding arbitration.

SECTION 2. Within 15 calendar days after the date the Employer receives written notice from the Union to invoke arbitration, the parties shall meet to select an arbitrator. If agreement cannot be reached at this initial meeting, either party may submit a request to the Federal Mediation and Conciliation Service for a list of names of five Oahu residents who are qualified to act as arbitrators. Within five calendar days of receipt of the list of names, the parties will meet again. If mutual agreement cannot be reached on one of the names on the list, the Union and the Employer will each strike one name from the list in rotation until only one name remains. The remaining person shall be the duly selected arbitrator. The order of striking shall be determined by the flip of a coin. If for any reason the Employer refuses to participate in the selection of an arbitrator, the Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an arbitrator to hear the case.

SECTION 3. Following the selection of the arbitrator and his acceptance, the parties will prepare a joint letter submitting the matter in dispute. The letter shall present, in question form, the matter on which arbitration is sought. The joint letter of submission shall stipulate that the arbitrator, in arriving at his award, shall be limited to the interpretation or application of this Agreement or to the interpretation or application of National Guard Bureau policies and regulations if the grievance involves issues pertaining to such matters. On other matters involving employee dissatisfactions over some aspect of the employment relationship or working condition as provided in Article XXII, the arbitrator will not be limited in his determination including consideration of precedential like cases. The letter to the arbitrator may be accompanied by any documents the parties mutually agree should be submitted to the arbitrator prior to the hearing. Disagreements on submission of documents at this time will not preclude submission at the time of the hearing. Either party may submit pre-hearing and/or post-hearing briefs, provided a copy of such briefs is furnished to the other party.

SECTION 4. The arbitration hearing shall be held during the regular day shift working hours, Monday through Friday. Employee participation required by the arbitrator shall be in pay status without charge to leave.

SECTION 5. The arbitrator shall be requested to submit his award to the parties as soon as possible but, in any event, not later than 30 calendar days after conclusion of the hearing, unless the parties mutually agree otherwise. The Employer and the Union shall be provided copies of the award. Within 10 calendar days after receipt of the arbitrator's award, the Employer shall render a written decision to the employee, with a copy to the Union, except when an exception to the arbitrator's award has been appealed to an appropriate higher authority.

SECTION 6. Fees, per diem, and travel expenses of the arbitrator shall be shared equally by the parties. Travel and per diem expenses will be paid at the maximum rate payable under the Standardized Government Travel Regulations. It is understood that, as a general rule, arbitrators take their own notes and do not require a stenographic or other record of the proceedings. However, should the arbitrator require an electronic recording, the party requesting arbitration shall provide the necessary equipment therefor. The cost of a shorthand reporter, if requested by the arbitrator, shall be borne equally by the Employer and the Union.

ARTICLE XXV

EMPLOYER-UNION COMMUNICATION

SECTION 1. The primary point of contact between the Union and the Employer for the purpose of discussing questions that may arise concerning the interpretation or application of this Agreement or other matters involved in the day-to-day relations between the parties shall be: for the Union, the President of the Local, the Chief Steward and/or National Representative or his designee; for the Employer, the Civilian Personnel Officer or Chief of Staff, Hawaii Army National Guard. Nothing in this Article shall preclude any management or Union official from arranging for meetings on matters of mutual concern.

ARTICLE XXVI

ENVIRONMENTAL DIFFERENTIAL PAY

SECTION 1. When the Union believes that a work situation in the unit warrants coverage under payable categories of Appendix J, FPM Supplement 532-1, it will notify the supervisor of the work unit of the title, location and nature of the situation which may support payment of environmental differential. Within 20 working days of receipt of the Union's position, the parties shall meet for the purpose of discussing the matter.

SECTION 2. When the Employer determines or proposes that a work situation in the unit is such that it should be included or deleted from coverage under payable categories of Appendix J, FPM Supplement 532-1, he will notify the Union of the title, location and nature of the situation which indicates or fails to indicate entitlement to environmental differential pay. Within 7 working days of receipt of the Employer's position, the parties shall meet to discuss the matter.

SECTION 3. When the Union believes that there is a need to request the establishment of categories or percentages in addition to those in Appendix J, FPM Supplement 532-1, it will advise the Employer of such proposed changes. Within 20 working days of receipt of the proposal, the parties will meet for the purpose of discussing the proposal(s) and the preparation of a request to establish such categories or percentages which are mutually agreeable to both parties. The request will be forwarded to the National Guard Bureau for consideration and forwarding to the Civil Service Commission, through Department of Defense channels, if the circumstances warrant.

ARTICLE XXVII

GENERAL PROVISIONS

SECTION 1. The Employer agrees to have sufficient copies of this Agreement printed and distributed to each employee in the unit and each newly hired employee in the unit. The Employer further agrees to consult with the Union concerning the general format before printing the Agreement.

SECTION 2. The Employer agrees that each newly hired employee in the unit shall be informed by his supervisor of the Union's status as exclusive representative during the employee's orientation.

SECTION 3. The Employer agrees that each shop or office will post an organizational chart showing the supervisory chain of responsibility of employees in the shop or office. Changes affecting the supervisory chain of responsibility will be posted as soon as practicable.

SECTION 4. The Employer agrees that the Civilian Personnel Office will provide the Union a monthly listing of the names, job titles and work locations of all newly hired employees and of all employees leaving employment within the unit.

SECTION 5. As soon as possible after approval of this Agreement, the Employer agrees that the Civilian Personnel Office will furnish the Union with a listing showing the names, job titles and work locations of all employees in the unit. The Civilian Personnel Office shall provide the Union a similar listing on each anniversary date of this Agreement.

SECTION 6. The Employer agrees to furnish special tools necessary for performing work but which are not normally required by the trade within equipment allowances and funds. The Employer agrees to provide suitable secured space where available for storage of employee's tools.

SECTION 7. The Employer agrees to place the Union on distribution for all regulations, notices, and other publications, published by the Employer, dealing with personnel matters and maintain such distribution to the Union on a current basis.

ARTICLE XXVIII

DURATION OF AGREEMENT

SECTION 1. This Agreement shall remain in full force and effect for three years from the date of approval by the National Guard Bureau. Either party shall notify the other party in writing no more than 90 days nor less than 60 days prior to the termination of the initial three-year period of that party's desire to terminate or renegotiate this Agreement.

SECTION 2. In the event either party provides notice of a desire to terminate or renegotiate this Agreement in accordance with Section 1 of this Article, the parties agree to commence negotiation of a new Agreement within 30 calendar days of receipt of the notice. This Agreement will remain in full force and effect for an additional period of sixty (60) calendar days, or until a new Agreement is signed, whichever is earlier.

SECTION 3. It is recognized that amendments to this Agreement may be required because of changes in applicable laws or regulations issued by higher authority after execution of this Agreement. In this event the parties will meet for the purpose of negotiating new language that will bring the Agreement into conformity with such laws or regulations. The initial meeting to negotiate new language will be held not later than 30 calendar days after receipt by the Employer of the law or regulation which required the amendment. Such amendments as agreed to will be duly executed by the parties and will become effective upon approval by the National Guard Bureau.

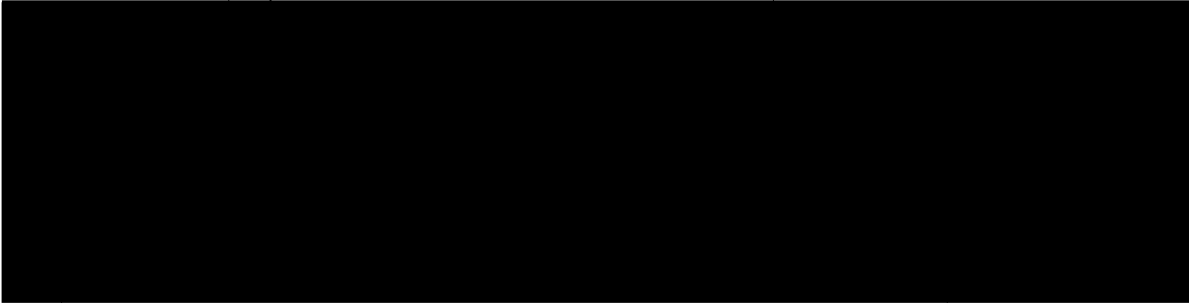
SECTION 4. Following approval of this Agreement, either party may propose the negotiation of amendments or supplements hereto after the Agreement has been in force for at least six months. Any such proposal must be in writing and must contain a summary of the amendment or supplement proposed. Within 20 calendar days after the receipt of such a proposal, representatives of the parties shall meet to discuss the matter. Any amendment or supplement on which agreement is reached will be duly executed by both parties and will become effective upon approval by the National Guard Bureau.

SECTION 5. All provisions of the Agreement not currently in effect will become effective upon the date of approval by the National Guard Bureau.

Signed this 9th day of January 1979 at Honolulu, Hawaii, for the Hawaii
Army National Guard and for the American Federation of Government
Employees - AFL-CIO, Local 882.

FOR THE EMPLOYER:

FOR THE UNION:



APPROVED: 13 FEB 1979

FOR THE CHIEF, NATIONAL GUARD BUREAU

