

COLLECTIVE BARGAINING AND PARTNERSHIP AGREEMENT

BETWEEN

THE

MOUNTAIN ADMINISTRATIVE SUPPORT CENTER (MASC)

BOULDER, COLORADO

AND THE

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (AFGE)

LOCAL 2186



April 1999

PREAMBLE

In order that the employees in the Recognized Exclusive Units (hereinafter referred to as "employee(s)") and management officials of the Department of Commerce's Mountain Administrative Support Center (MASC) (hereinafter referred to as "employer") may work together to achieve common interests and goals to support the mission and increase the efficiency of the Agency, this Negotiated Agreement is hereby established pursuant to the provisions and exclusions contained in Title 5, United States Code, Chapter 71 (hereinafter referred to as Title 5), and the Executive Order on Partnership, E.O. 12871 (hereinafter referred to as "partnership or partnering"), pursuant to the Exclusive Recognition of American Federation of Government Employees (AFGE) Local 2186 (hereinafter referred to as the "Union"). Within the terms of this agreement, use of the term "negotiate" refers to interest based bargaining. All references to "days" in this agreement, refers to "calendar days" unless otherwise specified.

Witnessed by the parties this 20th day of April, 1999

For the Employer:


Steven Smith, Personnel Management Specialist
Labor Relations Program Officer

For the Union:




Jack Schender, President
AFGE, Local 2186

ARTICLE 1. RECOGNITION AND UNIT DESIGNATION

Section 1. The Employer recognizes the Union as the exclusive bargaining agent and representative, under the provisions of Title 5 and Department of Commerce Administrative Order 202-711, for all employees, except managerial, supervisory, professional, intermittent, temporary limited and employees described in 5 USC 7112(b) (2), (3), (4), (6), and (7), in the bargaining units of the Financial Management Division, Acquisition Management Division, Facilities and Logistics Division, and the Information Resources Division.

Section 2. The Union recognizes its responsibility for representing the interests of all employees in the bargaining unit without discrimination and without regard to labor organization membership.

ARTICLE 2. GENERAL PRINCIPLES AND POLICIES

Section 1. This agreement and all supplemental, impending, subsidiary, and informal agreements between the Employer and the Union, are subject to the following provisions:

- A. Section 7106 of Chapter 71 of Title 5, United States Code, which states:

"7106. Management Rights

- (a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency -
 - (1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
 - (2) in accordance with applicable laws-
 - (A) to hire, assign, direct, lay off, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary actions against such employees;
 - (B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
 - (C) with respect to filling positions, to make selections for appointments from
 - (i) among properly ranked and certified candidates for promotion; or
 - (ii) any other appropriate source; and;
 - (D) to take whatever actions may be necessary to carry out the agency mission during emergencies.
- (b) Nothing in this section shall preclude any agency and any labor organization from negotiating -
 - (1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the

- technology, methods and means of performing work;
- (2) procedures which management officials of the agency will observe in exercising any authority under this section; or
 - (3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials."

B. Union\Management Partnership, as authorized by Executive Order 12871, shall be implemented for the life of this agreement. Involvement in partnership includes:

- Pre-decisional involvement
- Information sharing
- Responsibility
- Timeliness
- Openness
- Trust
- Cooperation
- Receptiveness and an open attitude
- Training and activities to foster and encourage partnership and good morale

The Employer and Union agree to form a MASC partnership council. The purpose of this council is to foster an environment of partnership and involvement at all levels and resolve issues as required. The council will be comprised of the following members:

- President, AFGE Local 2186 or designee;
- Vice President for MASC, AFGE Local 2186;
- Director of MASC or designee;
- Labor-Management Relations official (HRD);
- Eight additional representatives, four to be designated by the union, and four by the employer.

The council's mission will be to promote a cooperative, constructive working relationship between members of the bargaining unit and management. The responsibilities of the council will be to:

- Identify problems and develop solutions to better serve the customers of the Mountain Administrative Support Center.
- Establish and promote the development of methods of Alternative Dispute Resolution.

Promote open communications at all levels for purposes of enhancing customer service.

Section 2. The Employer and the Union agree that regulations and policies imposed by an authority above MASC shall take precedence over the terms of this Agreement unless the issuing authority or the Federal Labor Relations Authority determines there is no compelling need for the regulation or policy as pertains to the Bargaining Unit, or unless a government-wide regulation or policy is issued to implement 5 U.S.C. 2302 on prohibited personnel practices. However, the Union retains the right to negotiate on impact and implementation of any required changes in employment conditions. Partnering shall not delay the implementation of the changes in the event the parties are unable to reach consensus.

Section 3. The Employer and the Union agree that, as provided by Title 5, employees shall have, and shall be protected in the exercise of the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from such activity. The right of employees to assist a labor organization is recognized as extending to participation in the management of the organization and acting for the organization in the capacity of organization representatives, including presentation of its views to officials of the Executive Branch, the Congress or other appropriate authority. The Employer hereby affirms to all employees the rights described in this Section, and states that no interference, restraint, coercion, or discrimination shall be practiced within the Agency to encourage or discourage membership in a labor organization.

Section 4. The Employer and the Union further agree that the rights of Section 3 of this Article do not authorize participation by supervisors or management officials in the management of a labor organization, or in acting as a representative of such an organization, except as provided by Title V. Nor does it authorize participation by an employee, when the participation or activity would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of the employee.

Section 5. The Employer and the Union agree to conduct interest based bargaining on impact and implementation with respect to changes in conditions of employment as provided by Title V. The Employer and the Union agree to consult on a regular basis to improve communication, understanding, and cooperation, and to settle problems of mutual concern. Nothing in this Section precludes partnering on any matter proposed locally concerning conditions of employment whether or not referenced in this Agreement. The Employer, however, reserves its right, in

accordance with 5 USC 7101 (b), to implement changes prior to bargaining to impasse, if necessary, consistent with the necessary functioning of the agency.

Section 6. Matters appropriate for partnering between the Employer and the Union include, but are not limited to, regulations, policies, and procedures promulgated within MASC which impact working conditions of employees in the recognized units. Some examples are: safety, training, labor-management cooperation, employee services, methods of adjusting grievances, leave scheduling, **restructuring/reorganization**, environmental pay, hours of work, office environment (heat, space, lighting).

Section 7.

- A. The terms of this agreement do not preclude any employee from bringing matters of personal concern to the attention of appropriate officials under applicable law, rule, regulation, or established agency policy.
- B. An employee may choose to represent him/herself or to be represented by the Union in any grievance not excluded under Article 3 of this Agreement. If a grievant(s) is not represented by the Union, the Employer will ensure the right of the Union to have an observer present at any discussion with the grievant(s) concerning an adjustment or resolution of the grievance.
- C. An employee may elect to be represented by anyone of his/her choice in appellate actions not processed under the grievance procedure of this Agreement.
- D. The union is entitled to be present at any formal meeting between an employee(s) and any representative(s) of the employer held under provisions of the Federal Service Labor-Management Relations Statute.

Section 8. The Employer and the Union agree that an atmosphere of mutual respect and cooperation contribute significantly to effective Union-Employer relations. In implementing this contract, the Employer and the Union agree to seek to maintain, and further develop, such an atmosphere.

ARTICLE 3. GRIEVANCE PROCEDURE

Section 1. The purpose of this article is to provide for a mutually acceptable method for the prompt and equitable settlement of grievances as defined in 5 USC 7103(a)(9), over the application or interpretation of this agreement and other dissatisfactions. Unless otherwise provided for, this procedure will be the sole procedure available to the Union, the Employer, or bargaining unit employees for resolving grievances. Excluded from this negotiated grievance procedure are the following:

- A. Matters for which a statutory appeal procedure is established, except for removal or suspensions of more than fourteen days;
- B. Any matter which is subject to final administrative review outside of the Department of Commerce;
- C. Termination of probationary or temporary employees;
- D. Nonselection for promotion from a group of properly ranked and certified candidates;
- E. A notice of proposed action or preliminary warning;
- F. Informal measures taken by the Employer which are not a matter of formal record, such as oral and written admonishments. However, the employee may submit written rebuttal and discuss the matter with the next appropriate level of management;
- G. Suitability determination;
- H. Non-adoption of a suggestion;
- I. Disapproval of a performance or incentive award;
- J. Contents of employee performance plan or performance improvement plan;
- K. Matters not within the control or discretion of the Employer;
- L. Any issue for which there would be no tangible personal relief to the grievant or for which action is sought against another person; and,
- M. Matters excluded by law or government wide rule or regulation.

Section 2. Grievances which question directly or indirectly interpretation of higher authority regulations will not proceed to arbitration without clarification by the responsible agency office. This clarification will be binding on the arbitrator. The arbitrator shall decide the merits of the grievance considering this clarification.

Section 3. Questions as to whether or not a grievance is on a matter subject to the grievance or arbitration procedure may be referred by either party to arbitration in accordance with Article 4. Arbitration.

Section 4. Only a Union designated representative may represent an employee who files a grievance under this Agreement. However, a unit employee may present a grievance without the intervention of the Union.

Section 5 Informal Procedure and Time Frame.

The parties agree to attempt to resolve complaints informally at the lowest possible level (i.e., immediate supervisor). However, if informal attempts are unsuccessful, the filing of a formal grievance shall not be construed as reflecting unfavorably on an employee's or supervisor's good standing, performance, loyalty or desirability to the organization. A reasonable amount of Official time during working hours will be allowed for employees and Union representatives, to discuss, prepare for and present grievances, including attendance at meetings with the employer officials. If a grievant(s) is not represented by the Union, the Employer will assure the right of the Union to have an observer present at any discussion with the grievant(s) concerning an adjustment or resolution of the grievance. A grievance may be presented at any time within 30 days from the date that the grievant(s) became aware, or was notified, of the action or condition giving rise to the grievance. The intent of the 30 day grievance period or "window" is to allow adequate time for the involved individuals and organizations to attempt to informally resolve the issues. During this period both parties will meet timely and regularly to review and attempt to resolve the issue(s). If these informal efforts fail to resolve the issues giving rise to the grievance, the Formal Procedures shall be followed.

Section 6 Formal Procedures.

A. Step 1.

1. The grievance shall be presented formally within the thirty (30) day "window". The grievance shall be submitted to the Division Chief in writing, and shall contain, to the extent possible, the following:

- a. Name of the grievant(s),
- b. Designation of Union as the representative or statement of self representation,
- c. Details of the grievance,
- d. The corrective action sought,
- e. Memo(s) describing attempts at informal resolution,
- f. Signature of the grievant(s), and,
- g. Signature of the Union representative (if applicable) and date of submission.

2. The Division Chief shall, within fourteen (14) days, provide a written decision to the grievant, with a copy to the grievant's representative (if any), and to the Chief Steward.

B. Step 2.

If the grievance is not settled at the Division Chief level, the grievant(s) and/or the designated Union representative may, within fourteen (14) days, forward the grievance, in writing, to the Director, MASC, for further consideration. The grievance shall include memoranda of informal and formal step one proceedings, decision memoranda, and any rebuttal to the written decision of the Division Chief.

The Director, MASC, will provide a written response to the grievant, with a copy to the grievant's representative, if any, and to the Chief Steward, within twenty (20) days of receipt of the grievance.

Section 8. If the grievance is not satisfactorily settled at the level of Director, MASC, the Union or the Employer may refer the matter to arbitration in accordance with Article 4 of this agreement.

Section 9. All time limits in this Article may be extended by mutual consent. Extensions will not unreasonably be refused. Failure of the grieving party to advance a grievance to the next step within designated time frames shall result in cancellation of the grievance.

Section 10. Questions and issues arising over interpretations of this agreement will be addressed in the MASC partnership council.

Section 11. At any point in the process, and prior to arbitration, the services of a facilitator/mediator may be used, by mutual agreement, to resolve the conflict.

ARTICLE 4. ARBITRATION

Section 1. If the Employer and the Union fail to settle any grievance processed under the negotiated grievance procedure, such grievance, upon written request by either party to the other within thirty (30) days after issuance of the MASC Director's final decision, may be submitted to arbitration.

Section 2. Within seven (7) days from the date of the request for arbitration, the parties shall jointly request the Federal Mediation and Conciliation Service to provide a list of five (5) arbitrators from which to select an individual to decide the issue. The parties shall meet within five (5) days after the receipt of such list to make their selection. If they cannot mutually agree upon a selection, the Employer and the Union will each strike, alternately, one name at a time until only one remains. The Employer shall have the first strike. The remaining person shall be the duly selected arbitrator.

Section 3. If for any reason the Employer or the Union 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 4. If the parties fail to agree on a joint submission of the issue for arbitration, each shall submit a separate submission, and the arbitrator shall determine the issue or issues to be heard.

Section 5. The arbitrator's fee, other arbitrator's expenses, and cost of the hearing transcript, if any, shall be borne by the losing party. In the event of a split award, cost will be equally shared. The arbitration hearing will be held, if possible, on the Employer's premises during the regular day shift hours of the basic work week. All employee participants in the hearing shall be in a duty status if they otherwise would have been in a duty status. No other costs or fees of any kind will be assessed against the Employer in an arbitration case.

Section 6. The arbitrator will be requested to render the decision as quickly as possible, in any event not later than (30) days after the conclusion of the hearing unless the parties mutually agree, in writing, to grant an extension of the time limit.

Section 7. The arbitrator's award shall be binding on the parties. However, either party may file an exception to an award, when made under regular arbitration procedures, with the Federal Labor Relations Authority under regulations prescribed by the Authority.

Section 8. The Union will be allowed reasonable time to prepare for the arbitration process, including pre-arbitration interviews with union witnesses who are bargaining unit employees.

such grievance, upon written request by either party to the other
within thirty (30) days after issuance of the NAC Director's
final decision, may be submitted to arbitration.
level final award and to parties to be binding on the
arbitration award shall be binding on the date of the request
for arbitration. The parties shall jointly request the Federal
Mediation and Conciliation Service to provide a list of five (5)
arbitrators from which to select an arbitrator to decide the
dispute. The parties shall meet within five (5) days after the
receipt of such list to make their selection. If they cannot
mutually agree upon a selection, the Employer and the Union will
each submit an alternate name of a candidate within five (5)
days of the meeting. The arbitrator shall have the first choice.
The arbitrator shall be the duly selected arbitrator.
Section 1. If for any reason the Employer or the Union refuses
to participate in the selection of an arbitrator, the Federal
Mediation and Conciliation Service shall be authorized to make a
direct designation of an arbitrator to hear the case.
Section 2. If the parties fail to agree on a joint submission of
an arbitrator, each shall submit a separate request
to the Federal Mediation and Conciliation Service to determine the issue of
arbitration. The arbitrator shall be selected by the Service.
Section 3. The arbitrator's fee, other arbitrator's expenses,
and cost of the hearing transcript, if any, shall be borne by the
party who requests arbitration. In the event of a split award, cost will be
shared equally. The arbitration hearing will be held, if possible, on the
Employer's premises during the regular day shift hours of the
basic work week. All expenses incurred by the hearing party
shall be assessed if they are not otherwise assessed in a grievance.
No other costs of any kind will be assessed
against the Employer in an arbitration case.
Section 4. The arbitrator will be requested to render the
decision as quickly as possible, in any event not later than (30)
days after the conclusion of the hearing unless the parties
mutually agree, in writing, to grant an extension of the time
limit.
Section 5. The arbitrator's award shall be binding on the
parties. However, either party may file an exception to an award,
when made under regular arbitration procedures, with the Federal
Labor Relations Authority under regulations prescribed by the
Authority.

ARTICLE 5 DUES WITHHOLDING

Nothing in this agreement shall require an employee to become or remain a member of a Union organization, or to pay money to the organization except pursuant to a voluntary, written authorization by a member for payment of dues through payroll deductions.

The parties to this agreement agree to continue to abide by the conditions negotiated in the Dues Withholding Agreement governing the practices and policies of processing voluntary union dues withholding authorizations and the revocation of the same.

ARTICLE 6. DURATION OF AGREEMENT

Section 1. This Agreement is viewed as a living document and will remain in full force until a notice of termination is issued by either party. This agreement may be modified at any time through a partnership effort and may be appended with agreements on specific issues arrived at through partnering efforts, subject to statutory, agency-head review.

Section 2. Either party must give 30 days written notice to the other of intent to terminate this agreement. At the time of termination of agreement, the May, 1995, contract will become effective in full, until such time as a new agreement can be negotiated.

Section 3. The Employer agrees to recognize the right of the Union as the exclusive representative of the bargaining unit to bargain as appropriate over the impact and implementation of changes proposed by the Employer to personnel procedures, practices and working conditions when such changes significantly affect unit employees. The Union agrees to recognize the Employer's right to make changes in personnel practices, procedures and working conditions, subject to bargaining. Both parties agree that such bargaining will be conducted by means of mutual consultation, interest based bargaining procedures and consensus decision making through the MASC partnership council.

In witness to this agreement, signatures of the authorized representatives of both parties on this 23rd day of April 1999.

ARTICLE 7. GENERAL

Section 1.

The employer will provide the union with 50 copies of this agreement 8 1/2" x 11" in size, without cost to the union.

Section 2.

The union will provide each current bargaining unit member with a copy of this agreement.

1. All flexible and fixed Alternative Work Schedule options outlined in the Office of Personnel Management's (OPM) Handbook on Alternative Work Schedules, December 1996, (available on the OPM Web page at <http://www.opm.gov/ocaw/schedule.html>) will be available for adoption. This agreement is effective 12/1/98. The Department of Commerce will be subject to approval and approval by the appropriate immediate supervisor and Division Chief. Division Chiefs may limit choices to any option or combination of options which best meet the needs of the Division or work group in terms of adequate employee coverage and/or efficiency of the service (i.e., requested options which may have an adverse impact on the agency can be refused in specific divisions and/or work groups).

2. The options under this plan are available to employees on intermittent work schedules, shift workers, or employees (except office staff) in the Clerical Pool Services Office.

3. Employees are not required to participate in an alternative work schedule; employees not participating in an alternative work schedule will be placed on a regular fixed schedule of 8:00 a.m. to 5:00 p.m. (With a one hour lunch break to be taken between 11:00 a.m. and 1:00 p.m.).

4. The parameters for flexible work schedule options are:

Care hours: 10:00 a.m. to 11:00 a.m., Monday through Friday (Except for the maxiflex option which requires no care hours).

Flexible period: 5:00 a.m. to 10:00 a.m. and 11:00 a.m. to 8:00 p.m. (Except modiflex option flexible period is 5:00 a.m. to 8:00 p.m.).

Under a compressed work schedule option, hours are set and allow no flexibility.

Lunch periods are mandatory in the Department of Commerce. Employees will be required to take at least a one-half hour, unpaid lunch period on any day when working at least 7 hours.

MEMORANDUM OF UNDERSTANDING

between

MOUNTAIN ADMINISTRATIVE SUPPORT CENTER (MASC)

and

**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (AFGE)
LOCAL 2186**

In October of 1998 the MASC Alternative Work Schedule Plan for non-bargaining unit employees was changed to allow for even more flexibility in the application and use of alternative work schedules. This memorandum of understanding is entered into, and made an addendum to the MASC/AFGE Partnership Agreement, in order to extend these flexible arrangements, under the following terms, to bargaining unit members of the MASC.

1. All flexible and fixed Alternative Work Schedule options outlined in the Office of Personnel Management's (OPM) Handbook on Alternative Work Schedules, December 1996, (available on the OPM home page at <http://www.opm.gov/oca/aws/index.htm>) will be available for adoption and use by all full-time and part-time employees of each work group within the MASC, subject to agreement and approval by the appropriate immediate supervisor and Division Chief. Division Chiefs may limit choices to any option or combination of options which best meet the needs of the Division or work group in terms of adequate employee coverage and/or efficiency of the service (i.e., requested options which may have an adverse impact on the agency can be refused in specific divisions and/or work groups).
2. The options under this plan are not available to employees on intermittent work schedules, shift workers, or employees (except office staff) in the Clerical Pool Services Office.
3. Employees are not required to participate in an alternative work schedule; employees not participating in an alternative work schedule will be placed on a regular fixed schedule of 8:00 a.m. to 5:00 p.m. (With a one hour lunch break to be taken between 11:00 a.m. and 1:00 p.m.).
4. The parameters for flexible work schedule options are:

Core hours: 10:00 a.m. to 11:00 a.m., Monday through Friday (Except for the maxiflex option which requires no core hours).

Flexible period: 5:00 a.m. to 10:00 a.m. and 11:00 a.m. to 8:00 p.m. (Except maxiflex option flexible period is 5:00 a.m. to 8:00 p.m.).

Under a compressed work schedule option, hours are set and allow no flexibility.

Lunch periods are customary in the Department of Commerce. Employees will be required to take at least a one-half hour, unpaid lunch period on any day when working at least 7 hours.

Credit hours can be earned only during the flexible period under any flexible work schedule option. The maximum number of credit hours which may be carried over into succeeding pay periods is 24 for employees on a full-time tour or one quarter of the scheduled bi-weekly hours for employees on a part-time tour. Credit hours may be earned after an employee has completed an 80-hour tour of duty, or on any Saturday or Sunday during the flexible period, since the weekend is outside the regular work-week period. Employees may not earn credit hours on a holiday. An employee may not choose a new work schedule option which does not allow credit hours when he/she has a positive credit hour balance.

Annual leave, sick leave, leave without pay and credit hours may be used in 15-minute increments. Credit hours may also be earned in 15-minute increments.

Enacted by the parties this 26th day of April, 1999.

For the Employer:

[REDACTED]
[REDACTED], Personnel Management Specialist
Labor Relations Program Officer

For the Union:

[REDACTED]
[REDACTED] President
AFGE, Local 2186