Negotiated Collective Bargaining Agreement (a Contract)
between
The National Federation of Federal Employees, Local 1957
and
Minerals Information Team
Geologic Division, Eastern Region
U.S. Geological Survey, U.S. Department of the Interior

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PREAMBLE

Pursuant to the policy set forth by 5 U.S.C. 71 and E.O. 12871 regarding Federal Labor-Management Relations, the following articles of this Basic Collective Bargaining Agreement, hereafter referred to as the Agreement, together with approved supplemental agreements and/or amendments, which may be agreed to at later dates, constitute a total agreement by and between the U.S. Department of the Interior (DOI), U.S. Geological Survey (USGS), Geologic Division (GD), Eastern Region (ER), Minerals Information Team (MIT), hereafter referred to as the Employer, and the National Federation of Federal Employees (NFFE) Local 1957, hereafter referred to as the Union, for the employees in the Bargaining Unit described in Article 1, hereafter referred to as the Employees (or Employee to refer to any one of the Employees). The Employer and the Union will be jointly referred to as the Parties (and either the Employer or the Union will be referred to as a Party).

This Agreement is entered into pursuant to the Amendment of Certification of Unit, Case No. WA-CU-60015 dated March 26, 1996, for professional and nonprofessional units issued by the Federal Labor Relations Authority (FLRA).

The parties agree that public service is a public trust and that all Federal employees have a responsibility to place loyalty to the Constitution, laws, and ethical principles above private gain and to promote the efficiency of the Government through collaborative relations. The following general principles apply to every employee (including supervisors, team leaders, and management officials), and form the basis for the content, interpretation, and administration of this Agreement.

The conduct of all Federal employees should reflect the qualities of courtesy, consideration, and loyalty to the United States, a deep sense of responsibility for the public trust, promptness when dealing with and serving the public, and a standard of personal behavior that credits the individual and the Employer.

ALL EMPLOYEES SHALL:

Maintain especially high standards of honesty, integrity, impartiality, and conduct to ensure the proper performance of Government business and the continual trust and confidence of citizens in their Government.

§ Comply with all Federal statutes; Executive Orders; Office of Personnel Management, Departmental,

and USGS regulations; and the provisions of this Agreement.

§ Not hold financial interests in conflict with the conscientious performance of their duties and responsibilities.

§ Not engage in financial transactions using nonpublic Government information nor allow the improper use of such information to be used to further any private interest.

§ Put forth honest effort in the performance of their duties.

§ Not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

§ Not use public employment for private gain.

§ Act impartially and not give preferential treatment to any private organization or individual.

§ Protect and conserve Federal property and resources (including duty time) and shall not use Federal property and resources for other than authorized activities.

§ Disclose waste, fraud, abuse, and corruption to appropriate authorities.

§ Satisfy in good faith their obligations as citizens.

§ Adhere to all laws and regulations that provide for equal opportunity for all Americans.

§ Endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards.

Employees are required to carry out the policies and programs of the DOI, USGS, GD, and the MIT and to obey the proper requests and direction of supervisors and other persons with appropriate authority. While policies related to an Employees or the Employees work are under consideration, Employees may and are expected to express their professional opinions and points of view. Once a decision has been rendered by those in authority, each Employee is expected to comply with the decision and to work to ensure the success of programs or issues affected by the decision.

It is the intent and purpose of the Parties to set forth an Agreement that promotes these principles and a common understanding of expectations, personnel policies, procedures, practices, and other conditions of employment. The resulting Agreement provides a means for further discussion or adjustment of these matters, which facilitates the efficiency of the Government by providing methods for and encouraging the amicable, informal/formal, and expedient settlement of disputes and grievances involving conditions of employment.

The Parties agree to support, by their actions, all efforts to improve performance and processes, to improve the efficient operations of the Government, and to promote good will and collaborative relations among the Employer, Employees, and the Union.

ARTICLE 1

UNIT DESIGNATION

1. The Employer recognizes the Union as the exclusive representative of all Employees in Section 2 below, in accordance with the provisions of the Federal Service Labor-Management Relations Statute and all existing directives, for the purpose of negotiation and the administration of this contract.

2. The Bargaining Unit includes all professional and nonprofessional employees of the USGS, GD, ER, MIT.

3. EXCLUDED. All management officials, supervisors, and employees described in
   a. 5 U.S.C. 7112(b)(3)(4)(6) and (7). The Parties further agree that the following positions are excluded as confidential employees: Team Secretary and Team Administrative Officer.

ARTICLE 2

DURATION AND CHANGES

1. DURATION. This Agreement shall remain in full force and effect for a period of three (3) years from the date of its approval by the Director of Personnel, DOI. If the Director of Personnel, DOI, does not approve this Agreement within 30 days of submission, this Agreement shall take effect and be binding on the Parties.

2. AMENDMENTS. Amendments and/or supplements to this Agreement, negotiated subsequent to the signing of this Agreement, shall be accorded the same status as this Agreement and shall expire concurrently with this Agreement. Subsequent Agreements shall become effective on the date indicated in this Agreement or, if not specified, on the date signed by the Employer.

3. REOPENING. This Agreement is subject to reopening in accordance with the provisions of the article in this Agreement on Negotiations; when amendments are required because of enactment or amendment of laws, governmentwide rules or regulations, or Executive Orders; and at other times upon mutual agreement of the Parties.

    a. In the event that any provision of this Agreement shall be found or declared to be invalid by a court, other authority, or by Government regulation or decree, such decision(s) shall not invalidate the entire Agreement because it is the expressed intention of the Parties that all other provisions remain in full force and effect for the duration of this Agreement.

4. RENEWALS. This Agreement shall automatically be extended for an additional one (1) year period on the third anniversary date of its approval and for one (1)-year periods thereafter, unless either Party gives written notice to the other, not more than one hundred and five (105) days nor less than sixty (60) days prior to the anniversary date, of its intention to amend, renegotiate, or modify this Agreement. If such notice is given, then this Agreement shall remain in full force and effect until the changes have been negotiated and approved. If neither Party serves timely notice, this Agreement shall be renewed for the additional one (1)-year period(s).

ARTICLE 3

EMPLOYEE RIGHTS

1. UNION MEMBERSHIP. Employees are protected by law in the exercise of their right, freely and without fear of penalty or reprisal, to form, join, and assist any labor organization or to refrain from such activity. The Union will not encourage nor discourage Union membership except during scheduled membership drives. Employees have a right to be represented by the Union as members of the Bargaining Unit, regardless of their membership in the Union. The Union will not engage in coercion of any kind to obtain Union membership from an employee who exercises his/her right to representation as provided for by law or the provisions of this Agreement. This Agreement does not prevent any employee, regardless of labor organization or membership, from bringing matters of personal concern to the attention of appropriate officials in accordance with applicable laws, regulations, or agency policies or from choosing his or her own representative in a statutory appeal action other than the negotiated grievance procedures contained in this Agreement.

    a. Nothing in this Agreement shall abrogate any Employee right provided for by law or governmentwide regulation, or require an Employee to become or remain a member of a labor organization. An employee shall not be disciplined or otherwise discriminated against solely because he or she has exercised rights of appeal or redress under any available forum or procedure. Union membership shall not be discouraged or encouraged by the Employer.

2. OUTSIDE ACTIVITIES. Employees are permitted to engage in outside work and activities, with or without compensation with advanced approval, as long as such activity does not:
3. Interfere with the efficient performance of the Employee s official duties;

    a. Bring discredit on or cause unfavorable and justifiable criticism of the Government, the DOI, the USGS, the GD, the ER, or the MIT;

    b. Result in a conflict of interest or an apparent conflict of interest with official duties and responsibilities;

    c. Violate any law, statute, Executive Order, or applicable rule or regulation;

    d. Involve a prohibited source; or

e. Require the use of Government time, equipment, proprietary information, or other Government resources.

(1) Employees are required to obtain advance approval before engaging in the activities described in paragraph a of this Article in accordance with USGS requirements. Advance approval is also required for work with outside societies and associations. The prior approval process is intended to afford the Employer the opportunity to protect Employees from and to inform Employees of any potential conflict-of-interest problems or potential violations of criminal statutes or regulations before such violations take place.

(2) Applications for approval of outside employment or other outside activities must be submitted to and approved by the appropriate official prior to the Employee s engagement in such employment or activity. Employees must submit their application at the earliest opportunity, but no less than twenty-five (25) workdays in advance of the outside activity, including employment, to the Bureau ethics office through Division channels, for approval. Employees should provide the following information at a minimum when making such applications to assist the ethics officials in responding accurately and promptly to their request:

(a) The type of outside employment or activity to be performed,

(b) The party or parties for/with whom the outside activity will be performed,

(c) Whether and in what capacity the Employee has dealings with the party or parties indicated above in their official USGS position,

(d) The period of time during which outside activity is being performed (includes times of the day and dates),

(e) Whether or not compensation is received by the Employee, and

(f) The relation, if any, between the proposed outside activity/employment and the Employee s duties and responsibilities,

(3) If mitigating circumstances prevent the Employee from providing the application at least twenty-five (25) workdays in advance, then the employee should notify the ethics official immediately via telephone or e-mail. This telephonic/e-mail notification allows the ethics

office to make a preliminary determination and to warn the Employee of any potential violations in advance, thereby protecting the Employee from engaging in a prohibited activity during the time his/her application is in the approval process. An explanation of the mitigating circumstances must then be included in his/her written application. If the ethics officials cannot respond promptly to submitted applications, then the Employee will be notified.

4. Employees have the right to refrain from investing money, donating to charity, or participating in uncompensated activities, meetings, or undertakings not related to the performance of official duties. Employees may volunteer to participate in activities sponsored or supported by the USGS or the DOI.

5. Employees have the right to their privacy during off-duty hours. Employee conduct during off-duty hours will not be used against them in the evaluation of performance or other adverse actions, unless there is a nexus between the Employee s official position and the activity or such activity adversely reflects on the integrity of the Government, the DOI or any component of the USGS.

6. Weingarten Rights. Employees have the right to a Union representative when they are being examined by any representative of the Employer, as part of an investigation, when they reasonably believe that the examination may result in disciplinary action against them. Employees must request a representative and may do so at any time prior to or during the investigation. The Employer has a statutory requirement to notify Employees annually of Weingarten rights. The Parties agree that notification of Weingarten rights will be posted at all times on bulletin boards where employee information is normally posted to satisfy this requirement.

7. The Parties agree that when Employees are being interviewed in connection with third-party proceedings, no Union representation will be required so long as the procedures below are followed:

   a. Employees will be informed of the purpose for the questioning:

   b. The Employees will be assured that there will be no reprisal as a result of the nature of their response; e.g., if the information that they provide does not support management s position or supports the position of the opposing party.

   c. The questioning will not be coercive in nature.

   d. The questions do not exceed the scope of the legitimate purpose of the inquiry or otherwise interfere with the Employee s statutory rights.

8. Employees have a right to access information pertaining to conditions of employment, such as documents published by the Office of Personnel Management, the DOI, the USGS, etc. These publications are available for employee review in the USGS personnel office. Employees will be permitted to obtain a reasonable number of copies as necessary.

9. Employees have the right to work in an environment that is free from discrimination by either the Employer or the Union, as provided by various statutes, on the basis of race, color, creed, religion, sex, national origin, age, marital status, sexual orientation, physical or mental disabling conditions, political affiliation, or Union membership.

10. Employees will be informed to the fullest extent possible by the Employer and the Union of plans and policies affecting them and their conditions of employment. The Employer, through its supervisors, will communicate what is expected of Employees in terms of their performance, conduct, and work relations with coworkers, and to whom Employees are responsible on a continuing basis through written information, such as position descriptions and performance documents, training, and oral communications, such as supervisory/Employee meetings and/or all-hands meetings.

ARTICLE 4

EMPLOYER RIGHTS

1. The Employer retains the right,

   a. In accordance with the Federal Service Labor-Management Relations Statute, to determine the missions, budget, organization, number of employees, and internal security practices of the Bureau; and,

   b. In accordance with applicable laws:

      (1) To hire, assign, direct, lay off, and retain employees or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

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

      (3) With respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion or from any other appropriate source; and

      (4) To take whatever actions may be necessary to carry out the Employer s mission during emergencies.

   c. Nothing shall preclude the Employer and the Union from negotiating:

      (1) At the election of the Employer, 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 that management officials 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.

2. The Employer retains the right to determine if a proposed procedure or arrangement would cause undue interference with the exercise of the Bureaus statutory rights, or would significantly hamper the its ability to accomplish its work. The Employer agrees to use the Labor-Management Partnership Committee (LMPC) to consult with the Union where there is disagreement.

3. The Employer retains all other rights provided or inferred in accordance with law, regulation, or other provisions of this Agreement.

ARTICLE 5

UNION RIGHTS AND REPRESENTATION

1. EXCLUSIVE REPRESENTATION. In accordance with the applicable provisions of the Federal Service Labor-Management Relations Statute, the Union has been recognized as the exclusive representative of the employees included in the Bargaining Unit described in Article 1, Unit Designation. The level at which the Union holds exclusive representation is the Chief Scientist, MIT, in accordance with statute and FLRA certification.

   The Union has the right to act for and to negotiate Agreements covering all the Employees in accordance with the governing laws, rules, regulations, and the provisions and procedures of this Agreement. The Union is responsible for representing the interests of all Employees in a fair and equitable manner, without discrimination, reprisal, or regard to Union membership.

2. INVESTIGATORY REPRESENTATION. Upon the proper election of an Employee to exercise his/her Weingarten rights, the Union shall be afforded reasonable notice of and the opportunity to provide a representative for investigatory interviews. Such notice will not normally be less than one (1) day. Requests for a specific Union representative will be considered on a case-by-case basis in view of the nature of the investigation, the need for immediate information or action, the seriousness of the situation, etc. Management will make every effort to accommodate such requests. However, neither the Union nor the employee may grieve the denial of a request to delay or reschedule a meeting until a specific Union representative is available. The Parties agree to make an exception when the Union President asserts that no Union representative is available who possesses the proper level of training.

   a. The Union representative may:

      (1) Confer with the Employee(s) concerning the questions and the framing of answers, or
      (2) Ask questions and make observations on behalf of the Union.

   b. The Union representative may not:

      (1) Disrupt or end the meeting,

      (2) Answer questions for the Employee, or

(3) Advise the Employee to remain silent or to provide false information.

c. The Employer can and will ask the Union representative to refrain from prohibited conduct during the investigation, and the representative is obligated to do so. Any disagreements as to the nature of the conduct may be examined after the meeting, but may not be used to defer attention from the matter under investigation. The Parties agree that all participants in these meetings must treat each other respectfully.

d. Performance appraisal interviews or counseling, a meeting to inform or announce disciplinary action being taken against an Employee, or warnings without questioning are exempt from the requirements of this section. Note: If a Union representative has participated, by mutual Agreement of the Parties, in the pre-disciplinary process, he/she should be notified of the meeting to present proposals or final decisions to the Employee and, with the Employee's permission, be afforded access to the meeting.

3. FORMAL DISCUSSIONS. The Union has a right to be given an opportunity to have a representative present at all formal discussions. The Employer will give the Union President or designee up to one (1)-day notice of such discussions. The Union agrees to accept less notice when problems arise that necessitate immediate attention from the Employer. The Union representative in formal discussions may ask relevant questions and make relevant comments, including the expression of the Union's position on any particular matter under discussion. However, the Union representative may not disrupt the meeting or behave in a discourteous or disrespectful manner to any of the participants.

4. COMPLAINTS AND GRIEVANCES. The Union has the exclusive right to represent Employees in presenting grievances under the negotiated grievance procedures in this Agreement, including any resulting arbitration. The Union will be given reasonable notice of and an opportunity to provide representation at any formal discussions and meetings held with Employees in order to process formal grievances. The Union shall be provided a copy of all resolutions to formal grievances. All resolutions to formal grievances shall be in accordance with the provisions of this Agreement.

The Union may delegate its right to exclusive representation to an appropriate party, such as the aggrieved Employee or another representative of its choice. Such delegations must be provided in writing to the Bureau Labor Relations Officer (LRO) prior to the conduct of any representational activity by the designee, such as meetings, information requests, arbitration or other hearings, etc. It is agreed and understood that delegation of this right results in release of the responsibility to inform the Union of formal discussions and meetings regarding the resolution of the formal grievance. It is

further understood and agreed that, upon delegation of this right, the Union will no longer be afforded the opportunity to provide representation to any such meetings or hearings that may be conducted in the resolution process. Nothing in this paragraph refers to the Union s right to engage the services of representatives of the NFFE National Office. However, the Union agrees to notify the LRO if and when a representative of the NFFE National Office will serve as the Employee/Union advocate in an arbitration.

5. PROTECTION FOR EMPLOYEES. The Employer agrees that no restraint, coercion, or discrimination will be taken against any Union representative resulting from the performance of his/her duties of representation under the provisions of applicable laws, rules, regulations, and the provisions of this Agreement. It is further agreed that the same protections will be afforded Employees who seek Union representation in connection with the exercise of their rights as provided in this Agreement, including the filing of a formal grievance or who serve as a witness for the Union or another aggrieved Employee.

6. NATIONAL RECOGNITION. The Employer agrees to afford recognition to representatives of the NFFE National Office. The Union agrees that such representatives will conduct themselves in accordance with applicable laws, rules, regulations, and provisions of this Agreement.

7. OFFICIALS AND STEWARDS. The Employer agrees to recognize a President, a Vice President, a Secretary, a Treasurer, a Chief Steward, and up to five (5) Stewards as officials of the Union. The Union agrees to provide a listing of all officials on an annual basis and to provide updated information as changes take place. Official time granted to the Union will be limited to the officials and stewards contained in the list and in accordance with the provisions of this Agreement.

8. INFORMATIONAL PICKETING. The Employer recognizes the Union s right to participate in informational picketing that is in accordance with appropriate laws and regulations and that does not interfere with the Agency s operations. In exercising this right, the Union agrees that it shall not call or participate in a strike, work stoppage, or slowdown, or condone any of these actions by failing to take action to prevent or stop them. The Union agrees to notify the Bureau LRO prior to the commencement of such picketing.

9. COMMITTEES. The Union may appoint as its representative, with management s concurrence, members to MIT committees whose purpose is to examine, improve, protect, or change working conditions of Employees.

ARTICLE 6

GRIEVANCE PROCEDURE

1. PURPOSE AND COVERAGE. The purpose of this Article is to establish a mutually acceptable method for the prompt and equitable resolution of grievances. The Parties agree to attempt informal resolution of all contract-related matters.

   a. The procedures contained in this Article are the exclusive avenue of redress available to the Union, the Employer, and the Employees, with the following exceptions:

      (1) Grievances regarding matters covered by 5 CFR 752 (adverse actions) or 5 CFR 432 (actions based on unacceptable performance) may be filed either under this procedure or as an appeal to the Merit Systems Protection Board (MSPB), but not both. The filing of an appeal to MSPB or a grievance under this procedure waives the Employees right to use the other procedure. However, selection of this grievance procedure does not prejudice the rights of the Parties or the Employees to seek MSPB review of the final decision of the arbitrator in accordance with applicable regulations.

      (2) Claims of discrimination or sexual harassment under the purview of Title 7 U.S.C., as amended, may be filed under this procedure or through the USGS s Agency s established procedures for discrimination complaints, but not both. The filing of a grievance or complaint under either procedure waives the Employee s right to use the other procedure. However, selection of this grievance procedure does not prejudice the rights of the Parties to this Agreement or the Employee to seek Equal Employment Opportunity Commission (EEOC) review of the final decision of the arbitrator in accordance with applicable regulations.

   b. The term grievance means any complaint:

      (1) By any bargaining unit Employee concerning any matter relating to the employment of the Employee;

      (2) By the Union concerning any matter relating to the employment of any Employee, subject to the control of the Employer and for which the Employee seeks personal relief; and

      (3) By an Employee, the Union, or the Employer concerning:

(a) The effect of interpretation or a claim of breach of this Agreement or

(b) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation that affects the conditions of employment of Employees.

c. This procedure will not apply to:

(1) A claimed violation of prohibited political activities;

(2) Matters related to retirement, life insurance, or health benefits;

(3) Any examination, certification, or appointment;

(4) The classification of any position that does not result in the reduction of grade or pay for an Employee;

(5) Any suspension or removal under 5 U.S.C. 7532 (national security);

(6) Termination of an Employee for unsatisfactory performance or conduct when he/she is serving a probationary or trial period after initial appointment;

(7) Termination of a temporary Employee or upon expiration of the appointment;

(8) Reduction-in-force (RIF) actions appealable to the MSPB (Note: This does not preclude the Union from filing a grievance regarding the overall RIF.);

(9) Actions that are proposed and have not been effected;

(10) Termination of a temporary promotion prior to its expiration;

(11) Receipt by an Employee of a counseling memorandum or warning letter (Note: Employees may use the alternative dispute resolution (ADR) procedures contained in this Agreement to attempt resolution of issues related to counseling and warning letters.);

(12) Individual appeals of any action taken or not taken under the incentive awards programs;

(13) The exercise of any supervisors discretionary authority to excuse absences of up to one (1) hour as long as the authority is exercised in a fair and equitable manner;

(14) The decision by a supervisor not to remove a letter of warning, counseling memorandum, or reprimand from the file in which it is kept prior to its expiration date, unless there is a claim of disparate treatment;

(15) The issuance of a performance improvement plan (performance appraisals are not excluded); or

(16) The court-ordered garnishment of wages.

2. INFORMAL RESOLUTION PROCEDURES. The Parties agree that it is in their collective best interest to resolve grievances equitably at the lowest level and within the shortest time frames possible. The Parties further agree to avail themselves of outside assistance in the form of mediation to the fullest extent possible and with the permission of the aggrieved Employee when applicable. Effective communication will often serve to resolve various issues and causes for dissatisfaction. Therefore, before a grievance is processed under the formal procedures prescribed by this Article, the following guidelines will be followed:

a. Employees should discuss with their immediate supervisor any cause of dissatisfaction in an effort to resolve the matter prior to raising the issue as a grievance.

b. The Union and the Employer agree to have at least one discussion for the purpose of informally resolving any issue(s) between them prior to raising the issue(s) as a formal grievance.

c. To promote and encourage effective Employee/supervisor communication, the Parties agree that the initial dispute discussion will normally include only the Employee(s) and the immediate supervisor. In support of this effort, the Parties agree to work with the Employee and supervisor, as applies, to assist them in overcoming any personal concerns about the meeting, by assisting in the preparations for the meeting and encouraging them to meet one-on-one. The Union should reassure an Employee that this meeting is not the only opportunity for resolution of the dispute.

d. If discussion with the immediate supervisor is unsuccessful in resolving the issue(s), then the Employee may discuss the issue(s) with the Union, the servicing Employee Relations Specialist,

or the Bureau (LRO) to seek assistance in further resolution methods. Any of the parties contacted may further discuss the issue(s) with the immediate supervisor for the purpose of promoting resolution.

e. Any of the parties involved may request and will normally be approved for the use of a mediator from the cadre of USGS mediators or from the Federal Mediation and Conciliation Service (FMCS). The Employer, the Union, or the USGS shall make arrangements for a mediator. If the Employee requests mediation, then he/she must agree to participate fully in the process. The Employer agrees to participate fully in the mediation process to the extent that reasonable progress towards resolution is being made. Employees may also request to use the additional ADR procedures provided for in this Agreement.

3. FORMAL GRIEVANCE PROCEDURE. The following procedures will be followed for Employee grievances or a Union grievance filed on behalf of an Employee, when informal resolution attempts result in the need for further consideration of the issue(s):

a. First Formal Step. The grievance must be presented to the second-level Supervisor or his/her designee, in writing, within thirty (30) calendar days after the incident giving rise to the grievance or within thirty (30) calendar days from the date the grievant became aware of the incident. The supervisor or designee shall meet with the Employee and/or the Union as appropriate within seven (7) calendar days of receipt of the formal grievance. The supervisor shall provide a response to the grievant or the Union, as appropriate, within fourteen (14) calendar days following the meeting.

b. Second Formal Step. If the grievant remains dissatisfied with the grievance resolution, then he/she may advance the grievance within fourteen (14) calendar days after receipt of the Step One decision along with all related documentation to the Chief Scientist, MIT, or his/her designee. The Chief Scientist or designee will, within fourteen (14) calendar days, conduct fact-finding or meetings as deemed necessary and provide a final written decision to the Employee or the Union, as appropriate.

c. The Union may request the grievance be heard by an arbitrator within thirty (30) calendar days of receipt of the final decision in accordance with the procedures and provisions of this Agreement.

4. UNION AND EMPLOYER GRIEVANCES. Grievances may be submitted in writing by the Union President or the Chief Scientist, MIT, or his/her designee, to the other Party within twenty-one (21)

calendar days of the incident giving rise to the grievance or within twenty-one (21) calendar days from the date the grievant became aware of the incident. The Parties will meet within twenty-one (21) calendar days after receipt of the grievance to discuss the issue(s) further and to attempt informal resolution. The Party in receipt of the grievance will provide a written response to the other Party within twenty-one (21) calendar days after the meeting. If the grievance is not resolved by this method, either Party may refer the unresolved matter(s) to arbitration within thirty (30) calendar days following receipt of the written response.

5. GRIEVANCE CONTENT. Regardless of the type of grievance filed or the filing party, a grievance must contain the following: (Note: Grievances that are incomplete will be returned to the filing party for completion.)

   a. The name and telephone number of the Employee(s) who is (are) grieving and a full description of the incident(s) being grieved to include:

      (1) The date on which it occurred or the date on which the aggrieved party became aware of its occurrence;

      (2) What happened, including the specific actions of individuals, dates and times of such actions, and the names of any witnesses, if applicable;

      (3) What the impact was on the aggrieved party to include specific loss or damage suffered;

      (4) What is the personal relief requested, to include the actions requested;

      (5) How this relief corrects the loss or damage and/or makes the Employee whole;

      (6) The name and telephone number of the Employee s Union representative, if applicable; and

      (7) Any documentation related to the issue(s) being grieved.

6. TIME LIMITS. All time limits in this Article may be extended upon the mutual agreement of the Parties. Absent mutual agreement for extensions, failure to meet prescribed time limits will result in one of the following:

   a. If the Employer fails to respond within specified time frames, then the grievance is advanced to

the next step of the procedure.

b. If the grievant fails to meet the time limits at any step in the procedure or fails to keep established appointments for meetings, then the grievance may be dismissed by the Employer without further consideration.

7. REPRESENTATION. Employees may be represented by the Union or may represent themselves in grievances filed under this Article.

a. Any Employee may personally present a grievance and have it adjusted without the representation of the Union, provided that:

(1) The Union is given the opportunity to be present at all discussions related to the grievance;

(2) The Union is provided a copy of any and all correspondence, including supporting documentation, exchanged between the grievant and the Employer; and

(3) The resolution of the grievance does not violate the law, regulation, or the provisions of this Agreement.

b. The Parties agree that it is important to promote effective communication between Employees and their supervisors. Therefore, the Union will normally respect the wishes of an Employee to meet in private with his first-level supervisor in the informal stage. The Employer will ensure that the provisions of items (2) and (3) above are met.

c. The grievant(s) and the Union representative(s) will be approved for a reasonable amount of official time for the purpose of researching, investigating, preparing, and filing a grievance at each step of the procedures, including mediation, ADR, and arbitration in accordance with the provisions of this Agreement.

8. OTHER PROVISIONS.

a. Witnesses who have information relevant to a resolution of a grievance will be asked to testify in the grievance meetings on duty time.

b. Evidence that is relevant to the resolution of a grievance will be introduced at the earliest stage of

the process after it is discovered or received by either party.

c. New issues (those that were not presented prior to arbitration) may not be raised at the hearing. However, the parties may mutually agree to join related or similar issues/incidents to a grievance in process.

d. Any party to a grievance may request a meeting to discuss the merits of the grievance or to attempt further informal resolution at any step of the process.

e. Group grievances may be processed as a single grievance if the issues, times, and circumstances involved are practically identical.

ARTICLE 7

ARBITRATION

1. REQUEST and SELECTION PROCEDURES. Once a final decision has been issued under the negotiated grievance procedure, either Party may request that the grievance be heard by an arbitrator as follows:

   a. Arbitration requests must be submitted in writing with appropriate service to the other Party within thirty (30) calendar days from the date of the final grievance decision.

      (1) The request must state the issues to be presented and the personal relief sought by the grieving party.

      (2) The request may not contain issues or remedies not presented in the original grievance.

      (3) The request must be signed by either the Union President or the Employer's designated official.

   b. The Party who requests the arbitration will prepare a joint request to the FMCS for a list of seven arbitrators who are qualified to hear Federal sector issues. The request to FMCS must be made within fifteen (15) days of the date of the arbitration request and will indicate the general topic of the issues, such as performance, merit promotion, contract interpretation, leave, discrimination, etc.

   c. The Parties will meet within ten (10) days of the receipt of the list of arbitrators from FMCS to accomplish the following:

      (1) Select an arbitrator. A coin toss will decide which Party will strike a name from the list first. Each Party will alternately strike a name form the list until there is only one name remaining. The remaining name shall be the arbitrator selected.

      (2) Identify potential hearing dates. The Parties will agree on three potential dates for the arbitration hearing. The dates requested should be within the next sixty (60) days.

2. IDENTIFICATION OF THE ISSUES. The Parties will meet to attempt to formulate a joint statement of

the issue(s) to be heard by the arbitrator.

a. The meeting may take place anytime between the date of the request for arbitration up to ten (10) days after the potential hearing dates are submitted to the selected arbitrator.

b. If the parties fail to reach agreement, each Party will submit a separate statement to the arbitrator.

(1) The arbitrator will discuss the statements with the parties and will decide on the issues at the beginning of the hearing.

(2) Either Party may raise issues of the arbitribility/grievability of an issue(s) submitted by the other Party.

(3) The arbitrator shall have the authority to make arbitribility/grievability determinations as part of the process of identifying the issue(s) to be heard. Such determinations must be made at the hearing prior to addressing the merits of the original grievance.

3. THE HEARING. The arbitration hearing will be held on the Employers premises.

a. Normally, witnesses will be sequestered and only the designated representative(s) of the Parties and the grievant(s) will be authorized access to the hearing in its entirety.

b. The hearing will neither be scheduled earlier than 8:00 a.m. nor end later than 5:00 p.m. unless the Parties and the arbitrator mutually agree.

c. A verbatim transcript of the arbitration hearing may be made by an authorized court reporter. Unless the Parties mutually agree to share the costs, the fees will be bourne by the requesting Party. In cases of agreement, each Party will pay for an equal share of all expenses related to producing the transcripts such as the court reporters fees, and transportation reimbursement, and will receive one (1) official copy of the transcript. Fees for additional copies requested will be the sole responsibility of the requesting Party. This includes cases where one Party did not elect to share the costs and decides to procure a copy after the fact.

4. WITNESSES, REPRESENTATIVES, and EXHIBITS. Within fifteen (15) calender days of notification of the hearing date from the arbitrator, the Parties will meet to exchange witness lists, identify any joint exhibits and prepare any stipulation of facts on which they can agree. The Parties will also designate

their respective representative(s) for the arbitration hearing. Upon mutual agreement, this meeting may be combined with the meeting to attempt issue identification.

a. The Union representative(s), the grievant(s), and any Employee called as a witness will be excused from duty and authorized the amount of official time necessary for their participation in the arbitration hearing. Only the Union representative(s) designated above and the grievant(s) will be authorized official time for and be present during the entire hearing. Employees who are on a different tour of duty will be appropriately compensated for the time of the hearing for which they are involved.

b. Questions as to whether a witness is necessary to the hearing process will be resolved by the arbitrator prior to beginning of the hearing.

5. ARBITRATOR'S AWARD. The arbitrator's award will be in accordance with the provisions of this Agreement and all applicable laws and regulations. The arbitrator's authority is limited to the adjudication of issue(s) raised in the grievance. In cases where the arbitrator orders the specific discipline of an individual, the Employer retains the right to mitigate the specific disciplinary action if necessary to insure compliance with progressive discipline requirements and case law.

6. GRIEVANCE WITHDRAWAL OR SETTLEMENT. The grieving party may withdraw the grievance at any time prior to the actual convening of an arbitration hearing. The Parties may meet by mutual agreement at any time prior to the actual arbitration hearing and may make settlement arrangements.

7. POSTHEARING ACTIONS. Either Party may elect to file posthearing briefs within thirty (30) calendar days following the closing date of the arbitration hearing, but is not required to do so. The arbitrator is requested to render a decision, including appropriate remedy, as soon as possible, but not later than 30 calendar days following the filing of briefs unless another date is agreed to by the Parties.

a. Either Party may seek judicial review of the arbitrator's decision on matters that could have been appealed to the MSPB. The request for judicial review must be dated within thirty (30) calendar days from the date of the decision. The review will be sought in accordance with the provisions of 5 U.S.C. 7703.

b. Either Party may file an exception to the arbitrator's award with the FLRA, MSPB, or EEOC in accordance with law and regulation and will forward a copy to the other Party.

c. The arbitrator's award will normally be implemented prior to completion of the review or exception process. However, the Employer may make an exception on a case-by-case basis where the ordered remedies would cause undue hardship or potential endangerment to life or property or where the legality of the ordered remedy is challenged. Each Party will notify the other Party if there will not be a request for review or exceptions filed. In this case, the arbitrator's award will be binding on the Parties and will be implemented as soon as is practical, but not later than ninety (90) days from the date of the award.

8. FEES. The losing Party will be responsible for payment of the arbitrator's fees to include "customary and usual" fees paid for the number of cases heard per hearing day, reasonable study time based on the information provided by the FMCS, and necessary and reasonable travel and overnight accommodations (food and lodging) limited to the per diem rates for the Metropolitan Washington Area.

a. If the grievance is withdrawn prior to the hearing, then the Party who requested arbitration will be responsible for any cancellation fees.

b. If the grievance is settled informally prior to the arbitration hearing, the Parties will pay equal share of any cancellation fees.

c. Once an arbitration hearing date has been established, any party that unilaterally requests that the hearing be postponed, delayed, and/or canceled, for whatever reason, shall have sole responsibility for any fees that result from the request. If the parties jointly agree to request postponement, delay, and/or cancellation of the hearing, then any resulting fees will be split between the Parties.

d. In cases where there is a "split decision," each Party will pay the portion of the fees appropriate to the decision; e.g., if five issues are heard and one Party prevails on four of the issues, the other Party will pay four-fifths of the total fees. If a decision on a particular issue is split (e.g., disciplinary action is upheld, but the penalty is mitigated), then the Parties will pay equally for that portion of the fees.

e. Any disagreement as to the prevailing Party on a particular issue will be decided by the arbitrator.

9. EXPEDITED ARBITRATION. The Parties agree to the use of expedited arbitration when arbitration is invoked over grievances on the following matters:

a. Suspensions of fourteen (14) days or less;

b. Denials of annual or sick leave, credit hours, or nondiscretionary leave without pay;

c. Denial of any reasonable official time to which Union representatives are entitled under the provisions of this Agreement;

d. Bulletin board postings;

e. Use of facilities and equipment as provided for by this Agreement;

f. Distribution of Union literature;

g. Written reprimands;

h. Material maintained by a supervisor;

i. Performance appraisal of an individual Employee; and

j. Other matters mutually agreed upon by the Parties.

10. All the provisions regarding arbitration in this Agreement will apply to the use of expedited procedures with the following exceptions:

a. The Parties may mutually agree to apply normal arbitration procedures if the issues of the grievance are overly complex.

b. The Party who invokes arbitration wishes the grievance to be heard under these expedited procedures. The desire to use expedited procedures should be indicated in the initial request for arbitration. The Parties will meet prior to the expiration of the deadline to request a list of arbitrators from the FMCS to determine if they can agree to apply the expedited procedures to the matter to be heard. Whenever the expedited procedures are to be used, this will be indicated on the request to both FMCS and the selected Arbitrator.

c. The requested hearing date will be within twenty (20) workdays of the request to the arbitrator. If

the arbitrator cannot hold the hearing within the 20-workday time frame, then the last strike out on the original FMCS listing will be contacted. The Parties may mutually agree to extend the hearing date time frames in lieu of selecting another arbitrator.

d. The following procedural guidelines will apply:

(1) The hearing for a single issue grievance will normally not last longer than four (4) hours. The arbitrator shall ensure that the length of the hearing is not unnecessarily extended;

(2) The hearing shall be informal;

(3) Strict rules of evidence shall not apply;

(4) A verbatim transcript shall not be prepared;

(5) The arbitrator shall have the obligation of assuring that all necessary facts and considerations are brought forward by the Parties representatives in the most expeditious manner;

(6) It will be the sole discretion of the arbitrator to determine who may testify;

(7) The arbitrator may determine whether testimony or evidence is irrelevant or unduly repetitious and may exclude same;

(8) The Parties will have the right to present and cross examine witnesses;

(9) Upon submission of reasonable proof to the arbitrator that a witness who has personal and relevant knowledge of the facts involved cannot be present for the purpose of testimony, the arbitrator may accept a written affidavit. The acceptance of the affidavit affords it the weight that the circumstances warrant. Copies of affidavits accepted into evidence will be provided to the representatives of the Parties;

(10) Issues and requested remedies not included in the grievance process may not be raised by either Party during the arbitration;

(11) The Employer and the Union agree that the arbitrator will have no authority to add to, subtract from, alter, amend, or modify any provision of this Agreement;

(12) The arbitrator may not include any assessment of expenses against either Party, except in the case where it is necessary to determine the Party responsible for arbitration fees and expenses;

(13) Either Party will have five (5) workdays following the hearing to submit a written memorandum of its position to the arbitrator. If either Party intends to submit a memorandum, then that intent must be expressed at the hearing. If prepared, copies of the memorandum will be served on the other Party in accordance with the service requirements of this Agreement; and

(14) The arbitrator will be requested to render a written decision no later than five (5) workdays after the receipt of any position memoranda or after the hearing date as appropriate if memoranda were not to be prepared.

11. Arbitration awards rendered under the expedited procedures shall not serve as precedent in the administration of this Agreement or in subsequent arbitrations of future grievances arising from the interpretation or application of any law, rule, regulations, or provision of this Agreement.

ARTICLE 8

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES FOR UNFAIR LABOR PRACTICE CHARGES

1. The Parties agree that an unfair labor practice (ULP) will have the meaning given by the Federal Service Labor-Management Relations Statute (the Statute) and may be filed by either the Employer or the Union in accordance with the provisions of the Statute and this Agreement.

2. The Parties agree that the resolution of differences in the most expeditious manner is in the best interest of all concerned and that alternatives to expensive litigation are in the best interest of the Government and the public trust. Therefore,

   a. Prior to filing a ULP with the FLRA, whichever Party is filing will serve the ULP on the other Party. The Parties agree to meet within fifteen (15) work days of receipt of the ULP from the charging Party to discuss the issue(s) involved and to make a good faith attempt at informal resolution. The attempt at informal resolution will not involve demands and concessions, but rather will be focused on the open exchange of the views, supporting facts and information, and concerns and interests of the Parties. The fifteen (15)-day time frame may be extended or waived at by mutual agreement of the Parties.

   b. If resolution is not reached by the end of the fifteen (15)-day period or any agreed-to extensions, then the charging Party may drop the charge or file it with the FLRA. Should the charging Party decide to drop the charge, written notification will be provided to the other Party within fifteen (15) days following the expiration of the fifteen (15)-day period or any agreed-to extensions.

   c. Either Party may request the services of a mediator from the FMCS to facilitate informal resolution attempts. The charging Party will accommodate the request for mediation from the other Party, and will not proceed with further action on the ULP until mediation has taken place. The fifteen (15)-day time period will be suspended pending the availability of a mediator. Should the charging Party request mediation services, the other Party should accommodate the request. However, if the other Party refuses to participate, then the charging Party is free to take any actions allowable by the statute of the provisions of this Agreement.

3. The Parties further agree that once a ULP has been filed with the FLRA, and a complaint has been issued, they will participate in good faith in any alternative dispute resolution procedures

recommended by the FLRA prior to a formal hearing.

4. Nothing in the article is intended to compromise or restrict the statutory rights of the Parties.

ARTICLE 9

OFFICIAL TIME

1. PURPOSE. The Union President, Vice Presidents, Secretary, Treasurer, Chief Steward, up to five Stewards, and any Employees who are representing the Union on committees may be approved for the use of official time in accordance with the provisions of this Agreement and 5 U.S.C. 7131 as outlined below:

   a. Official time will only be granted when the Employee is in a duty status.

   b. Any activities performed by any Employee relating to the internal business of the Union, (including the solicitation of membership, elections of Union official, and collection of dues), shall be performed during the time the Employee is in a nonduty status and is not appropriate for the use of official time.

2. RELEASE. The Union representative will granted reasonable official time to represent Employees upon request to his/her immediate supervisor.

   a. The supervisor retains the right to delay the use of official time for that representation up to twenty-four (24) hours. Requests for scheduling the use of official time should be made in advance whenever possible.

   b. The Parties recognize that it may be necessary to leave the worksite (National Center) when performing representational activities, such as research, conferring with the NFFE Office, attending Union training, etc. The Union representative will notify the supervisor when using official time for these purposes.

   c. The Employer understands that on rare occasions, such as when an Employee is in extreme emotional duress, has been threatened verbally or physically, is the subject of an investigation by a criminal authority, or invokes Weingarten rights during a meeting already in progress, the Union representative may need immediate release to perform representational activities.

   d. Time and attendance requirements. All Union representatives and Employees who are approved

for official time must record the time used on their official time and attendance records. The following categories will be used for the reporting of official time:

(1) Required:
   (a) FLRA/FMCS/FSIP (Federal Services Impasse Panel)
   (b) Weingarten/formal discussion
   (c) Negotiations

(2) Negotiated:
   (a) ADR
   (b) Grievances (formal)

e. Labor-Management Partnership Committee (LMPC) meetings (includes subcommittee meetings)

(1) To assist the Parties in determining what is reasonable, the following guidelines are provided as the number of hours (in parentheses) normally required to complete the activity listed. This list is not all-inclusive, and the guidelines are not an absolute limit on the official time which will be granted:

   (a) Initial meeting with Employee(s) on matters for which remedial relief may be sought under this Agreement (1);

   (b) Initial investigation of matters for which Employees may seek remedial relief under this Agreement (meeting with supervisors, managers, or their representatives (2);

   (c) Interviewing witnesses (½ each witness);

   (d) Reviewing documents of the Employer that are not available during non-duty hours such as personnel regulation, Bureau policies, etc. (1);

   (e) Preparing a grievance or grievance appeal (minimum 4);

   (f) Preparing a statutory complaint or appeal (minimum 4);

   (g) Preparing a reply to a proposed disciplinary adverse or unacceptable performance action (2-4);

(h) Preparing for joint labor-management activities authorized by the Agreement (case-by-case basis depending on impact);

(i) Preparing for arbitration of a grievance or adverse action (16);

(j) Preparing a reconsideration statement in connection with the denial of a within-grade increase (WGI) or for a performance appraisal (2-4);

(k) Attending Union-sponsored training (240 total hours/year);

(l) Meeting with National representatives of the Union in connection with a grievance, arbitration, or ULP charge (1-2);

(m) Participating in a FLRA investigation or hearing preparation as a representative of the Union (determined by FLRA);

(n) Preparing or maintain records and reports required of the Union by the Department of Labor (4);

(o) Being present at formal discussions as provided in this Agreement (actual length of meeting);

(p) Orienting new Employees as provided for in this Agreement (½);

(q) Attending meetings with Employees to present oral replies related to proposed actions, denial of a WGI, or performance appraisal (decided by official receiving replies);

(r) Representing an Employee in Weingarten meetings as provided for by this Agreement (actual length of meeting); and

(s) Any other activity for which the Civil Service Reform Act allows Employees to use official time (to be determined by the nature of the request).

(2) The Parties agree to be flexible in their application of the provisions of this Article while diligent in exercising their respective responsibilities to guard against waste, fraud, and abuse

and to protect the trust.

(3) If either Party experiences problems with the granting or use of official time or the administration of this Article, then a special session of the members of the LMPC will be held to resolve them. If after good faith effort during the meeting, resolution is not reached, then either of the Parties may request the use of a mediator or file an appropriate appeal.

3. RELATION TO PERFORMANCE OF OFFICIAL POSITION. Union representatives are responsible for achieving the critical results as defined by their individual performance plan. The Employer agrees that Union representatives will not be penalized in their performance appraisal solely for their use of official time as long as that use is in accordance with the provisions of this Article.

ARTICLE 10

USE OF FACILITIES AND SERVICES

1. UNION OFFICE. The Employer agrees to provide the Union with an office at the National Center, convenient to Employees, for the conduct of Union business. The office will be properly lit, air conditioned, and heated as are other offices. The office must be private and must have a lock on the door.

   a. The office will be furnished with three locking file cabinets, desk, bookcase, meeting table, chairs, telephone, personal computer, and related support.

   b. The Union will have access to the office space at all times. Union officials using the office during security hours must comply with all building access requirements and security procedures. The Union President will be provided three keys at the Employer s expense. The Union may procure additional keys for officials of the Union but must ensure the overall security of the space when doing so. The door lock may be replaced with a combination lock upon mutual agreement of the Parties and at the Employers expense.

   c. Should the specific space occupied by the Union office be required as official office space, the Employer agrees to give the Union President as much advance notice as possible, but not less than thirty (30) days notice. The Employer will provide boxes necessary to pack Union materials and to make arrangements for the movement of Union furnishings to a new location. The new location of the office will meet the requirements of this Article.

2. INTERNAL MESSAGE SERVICE. The Union will be permitted to use the internal mail distribution service, the e-mail system, and the phone mail system under the following guidelines:

   a. The Union may not use the Employer s metered, franked, or other paid mail services.

   b. Sealed envelopes addressed to or from the Union will not be tampered with to the extent that this is within the control of the Employer. (The Employer uses a contractor for mail distribution.)

   c. Internal mail distribution services will not be used to deliver information related to Union organizing, fundraising, or other internal Union business.

d. The rules and regulations that apply to all Federal and USGS employees regarding the appropriate use of e-mail, phone mail, Internet, and internal distribution systems will apply to the use by the Union. In addition,

(1) Information that would adversely reflect on the integrity or motives of the Employer or individuals, any labor organization, Federal agencies, or the activities of the Federal Government may not be transmitted or distributed via the Employer s internal mail distribution, e-mail, or phone mail systems.

(2) Information transmitted or distributed must be informational in nature and must not make unsubstantiated accusations against the Employer or any specific individual, defame any Federal employee or the Federal Government, or violate the principles of ethical behavior and conduct of this Agreement.

(3) The Union must make a good faith attempt to investigate and obtain facts to substantiate information prior to its transmission. When providing procedural or regulatory requirements from this Agreement or any Federal law, rule, or regulation, the Union will quote the provisions from the information s source and will not provide official interpretation of, add to or subtract from the guidance in its original form.

3. FLIERS AND NEWSLETTERS. The Union will be permitted to distribute its own fliers or newsletter to all Employees provided that the information contained meets the requirements of Section 2 of the Agreement. The production/distribution must be performed on official time in accordance with the provisions of this Agreement. Union newsletters and fliers that are distributed on official time may not contain information that pertains to Union organizing, dues allotments, fundraising, or other internal Union business. Information of this type must be produced and distributed without the use of Government equipment, services, or supplies and must be delivered on nonduty time for both the distributor and the recipient.

4. BULLETIN BOARDS. A bulletin board(s) will be made available for exclusive use by the Union. At least one bulletin board will be made available upon request of the Union in other buildings where Employees routinely work. Notices posted must be truthful, factual in nature, and in good taste and must not violate any law, regulation, or provision of this Agreement. When posting documents obtained from the Employer, the documents will be posted in their original state and will not be altered, annotated, or defamed in any way.

5. USE OF OFFICE EQUIPMENT. The Union will be permitted to use office equipment and furnishings as are necessary to perform Employee representational duties to include typewriters, telephones, TDD s, word-processing equipment and software, facsimile machines, copying or duplicating machines, computers, software, and printers. The Union agrees to schedule the use of official time and equipment so as not to interfere with the official business requirements of the Employer. The use of such equipment is subject to the Employers approval as related to the timing and length of each incident of use. The Union will reimburse the Employer for all long- distance toll calls. Official time, equipment, and furnishings shall not be used for the conduct or support of internal Union business.

6. BARGAINING UNIT MEMBER INFORMATION. The Employer agrees to provide the Union with an alphabetical and organizational list of all Bargaining Unit members, as needed, which specifies the name, classification title and series, grade, and duty location for each member. In addition, the Employer will provide listings of changes to the composition of the Bargaining Unit in accordance with and as indicated in the provisions of this Agreement.

7. CONFERENCE ROOMS. The Union will be permitted the use of the USGS conference rooms when the use of such rooms does not conflict with their use by the USGS for official business purposes. The Union will make every attempt to schedule the use of the rooms as far in advance as possible, normally not less than three (3) days in advance. If the rooms are to be used for Union membership meetings or other internal Union business, then the rooms will be scheduled for use during nonduty hours. The Union will adhere to all security and housekeeping requirements when using the rooms.

8. MEMBERSHIP DRIVES. Upon request of the Union and subject to normal security limitations, the Union will be allowed to conduct a membership drive(s) for up to fifteen (15) days per calendar year during nonduty hours. Adequate space will be provided in a location that is convenient to Employees and meets normal security requirements. Except for the normal furnishings of the space provided, no other equipment, furnishings, or facilities of the Employer may be used by the Union.

9. COPIES OF THE AGREEMENT. The Employer will make copies of this Agreement to each Employee upon its implementation, either on the internal USGS internet or in paper copy, if requested. The Union will be provided with additional copies needed to provide them to new Employees in accordance with the provisions of this Agreement. The Employer will bear the cost of producing the copies needed for these purposes.

10. PUBLICATIONS AND REGULATORY MATERIALS. The Employer agrees to provide the Union with a copy of Title 5, Code of Federal Regulations, the U.S. Geological Survey Manual (including

updates), part 370 of the Departmental Manual, and to procure a Union subscription to the Federal Times newspaper, the Federal Employee News Digest, and The Consultant. The Employer further agrees to allow the Union and Employees access to additional regulatory documents maintained by the USGS personnel office. Union officials and Employees will be permitted to make reasonable copies of the materials available in the USGS Human Resources Office. The Employer authorizes the Union to use Internet access to obtain such materials and print reasonable copies.

11. STUDIES AND SURVEYS. The Employer will notify the Union of any studies or surveys in which Employees will participate and that may result in an impact on their conditions of employment. The Union will be provided a copy of the results or any report produced in the same format as that received by the Employer. The Employer will provide the results or report to the Union within five (5) days of receipt.

12. OPEN HOUSE. Upon advance request [at least (30) days], the Union may have a refreshment and/or information booth during any USGS Open House. The Employer will furnish similar space, services, and materials as is furnished to other organizations. Official time will not be granted for Employees to work the booth. The Employer agrees to liberally approve requested leave for Employees who are needed to work the booth. All individuals who work the booth will maintain proper and ethical conduct at all times. Information provided must not violate any law, regulation, or provision of this Agreement. The booth may not be used for the sole purpose of increasing membership. USGS or other Federal employees may not be approached for membership purposes if they are on duty.

13. USE OF OWNED OR LEASED BY THE GOVERNMENT. Management may approve use of such vehicles by the Union for representational purposes, if the vehicle is available and the use will not violate any law, regulation, or provision of this Agreement.

14. INTERPRETING SERVICES. The Employer will provide and fund interpreting services for the Union as necessary to provide representation to Employees. The Union must follow existing procedures when requesting interpreting services. The Employer may also provide and fund interpreting services for Union-sponsored training when it is deemed to be in the mutual interest of the Parties to do so. The Employer will not provide or fund these services for training or meetings when the purpose is Union organizing, internal Union business, provisions of Union constitution and bylaws, or similar matters.

ARTICLE 11

NEGOTIATIONS

1. GENERAL. The Employer and the Union recognize that collaborative relations are conducive to the accomplishment of the Employer's mission requirements, overall productivity, and employee morale. The Parties further recognize the statutory rights and obligations placed upon them to bargain, as appropriate, in good faith, and to work towards effective solutions to differences.

   a. All negotiations between the Parties will be conducted in accordance with law, regulations, and the provisions of this Agreement and, in particular, this Article.

   b. Departmental and Bureau-level policies, procedures, or instructions that do not directly implement a governmentwide rule and that are in conflict with the provisions of this Agreement may not be unilaterally enforced.

2. OTHER AGREEMENTS.

   a. Any and all past practices in conflict with the provisions of this Agreement become null and void upon the approval of the Agreement by the DOI.

   b. Any Agreement reached by the Parties subsequent to the approval of this Agreement and during its life (including extensions) shall become part of and run concurrently with this Agreement.

3. PROCEDURES FOR NEGOTIATIONS. The Parties agree to meet at times convenient to the Parties and on the Employer's premises. To the fullest extent possible, negotiations will not be scheduled to begin prior to 8:00 a.m. or end after 4:30 p.m. Negotiations will normally not be scheduled for Mondays or Fridays to accommodate AWS schedules, unless it is to the advantage of the Parties or benefit of Employees to do so.

   a. Notification. The Union President of his/her designee will serve as the official contact point for any required notification of the Union. Union notification will normally be provided in writing (to include e-mail) for major changes. However, upon an initial verbal notification of minor changes, the Union President or his/her designee may request that written notification also be provided. The Union will normally not require written notification of minor changes that have been agreed on between the Parties involved, such as moving a small number of Employees, changing the format

of sign-in/sign-out sheets, etc.

b. Requests to Bargain. All Union requests to bargain must be made in writing to the Chief Scientist, MIT, or his/her designee. A copy of the request to bargain should be simultaneously forwarded to the USGS LRO.

(1) The Union must request to negotiate within twenty (20) work days following any notification by the Employer where there is a major impact on the conditions of employment of Employees. The Union's request must include the Union's proposals for negotiations.

(2) The Union must request to negotiate within five (5) work days of any notification by the Employer where there is minor impact on the conditions of employment of Employees. The Union's request must include the Union's proposals for negotiation.

c. Negotiation Timeframes. The Employer will enter into negotiations within the same time frames for the situations described in paragraph b above. The timeframes may be extended or contracted as necessary upon mutual Agreement by the Parties. The Parties agree to cooperate in completing negotiations within shorter timeframes when problems arise concerning conditions of employment which necessitate more immediate attention.

4. DISPUTES. The Parties agree that it is in the best interest of continued collaborative relations to resolve disputes regarding negotiations in the most expeditious manner possible. Therefore, the following two-step procedures will be followed to resolve disputes:

a. Impasses. When the Parties have reached impasse on a negotiable matter and they agree further discussion will not remedy the situation:

(1) The particular item will be set aside, and negotiations will continue. After all other negotiable items for which agreement can be reached have been addressed, the Parties will again attempt to resolve any and all impasses.

(2) If after the second attempt at agreement, impasse(s) still exists, then the Employer will contact the FMCS to request a mediator. The Parties will then participate fully in an attempt to resolve the impasse with the services of the mediator. If they remain at impasse, then either party may request the services of the Federal Services Impasse Panel (FSIP).

b. Negotiability. When the Employer informs the Union that a matter is nonnegotiable, the Employer will articulate the reasons for the determination. The matter will be set aside, and all other negotiable matters will be addressed. Once all other negotiable matters have been addressed, the Parties agree to:

(1) Meet within five (5) workdays to present evidence in the form of case law or previous negotiability determinations from the FLRA and to attempt to come to agreement on the negotiability of the matter. If this meeting is unsuccessful, then

(2) The Union may submit the matter to the FLRA for a negotiability ruling.

ARTICLE 12

LABOR-MANAGEMENT PARTNERSHIP COMMITTEE

1. PURPOSE. The Parties recognize that an effective and collaborative relationship between themselves requires the opportunity for them to meet and discuss issues or problems of mutual concern and benefit on a regular basis. The purpose of these meetings includes, but is not limited to, conditions of employment, matters affecting working conditions of Employees, informal resolution of Employer or Union grievances or complaints, Employee morale and productivity, goals, products, cost effectiveness, and Employee-Management relations.

2. SCHEDULE. The Parties agree to meet in good faith on an as needed basis at the request of either Party.

3. ADMINISTRATION. The number of Union and Employer representatives will normally be limited to four each. However, additional representatives may be invited upon mutual agreement of the Parties owing to agenda items of special interest. Each Party will forward their agenda items to the other Party via e-mail as far in advance as possible, but no later than one week before the meeting is scheduled. The meetings will be held as scheduled regardless of the availability of specific Union or Employer representatives. Upon mutual agreement of the Parties, specific agenda items may be moved to the next monthly meeting, or discussed in a separate meeting when specific representatives are necessary for effective discussion. Should any agreement be reached on a particular issue or should informal settlement of a grievance or complaint of either Party be reached, such agreement or settlement shall be documented and signed by representatives of both Parties. The signed agreement is binding on the Parties so long as it is in compliance with law, regulations, and provisions of this Agreement, and regardless of the representatives present at the meeting.

4. OFFICIAL TIME. The authorized number of Union representatives will be on official time during their participation in these meetings. When the Parties agree on additional representatives, the specific representative(s) agreed upon will also be on official time while present. In the event that additional Union representatives (more than four) are present without mutual agreement, it will be incumbent upon the Union President to determine and notify the Employer which four are on official time. Those representatives not on official time will be personally responsible for obtaining appropriate approval of leave, credit hours, or compensatory time off in order to attend.

5. CONFIDENTIALITY OF INFORMATION. The Parties understand that the open and honest

communication of information is necessary to facilitate resolution of problems, for informal settlement of grievances or complaints, and to communicate their respective needs or concerns effectively. The Parties further understand that, on occasion, information may be revealed by either Party which is not appropriate for general release in any circumstances or which may not be appropriate for general release at the present time. Therefore, the Parties agree that, in such cases, the expressed desire of either Party that information be protected from release outside the meeting attendees will be respected. Further, individuals will not be quoted orally or in writing, including E-mail, when revealing such information or expressing their personal opinions.

ARTICLE 13

VOLUNTARY ALLOTMENT OF UNION DUES

The Employer will process requests for dues allotment and revocation for Employees, as described below:

1. The Union will obtain its own supply of SF-1187's, Request and Authorization for Voluntary Dues Allotment of Compensation for Payment of Employee Organization Dues, and furnish them to eligible members who request them.

2. On each form submitted, the Union President will normally certify the standing of the Employee and the amount to be withheld. In the absence of the President, any Vice President may sign. The completed form is sent to the USGS LRO who certifies that the Employee is eligible for Union membership. The LRO will ensure that the form is forwarded to the payroll office for processing. Allotments must be effected no later than the second full pay period after receipt of the SF-1187 by the LRO.

3. The Union President shall notify the LRO in writing when the Local's dues structure changes. The LRO will ensure the change is effected by the payroll office not later than the second full pay period after receipt of the notice by the LRO. The dues structure may be changed no more than twice in any twelve (12)-month period.

4. The Employer will promptly notify the Union when an Employee on voluntary dues allotment becomes ineligible for inclusion in the Bargaining Unit. The Union will promptly notify the Employer if a member of the Local is expelled from the Union. The LRO, upon verification that an Employee is ineligible or has been expelled, will ensure that the voluntary dues allotment is terminated.

5. The Employer agrees that a biweekly remittance check will be issued to the Union and forwarded to the designated Secretary/Treasurer, NFFE. The check will be issued at the close of each pay period for the amount of dues withheld through Employees' voluntary dues allotment during that pay period. The check will be forwarded immediately upon issuance along with a listing of the Employees and the amounts withheld for that pay period.

6. The Union agrees that when the Federal Personnel and Payroll System is fully operational, the payment of voluntary dues allotments to the Union will be made via Electronic Fund Transfer (EFT). The LRO will notify the Union as far in advance as possible and request the information necessary to

implement EFT. The Union agrees to provide the information within five (5) workdays of receipt of a request.

7. The Union will provide notification when there is a change to the designated financial officer for the Local. The notification will be via memorandum to the appropriate individual in the payroll office with a copy to the USGS LRO.

8. Any Employee may revoke a voluntary dues allotment by completing a form SF-1188, Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Employee Organization Dues, or via signed memorandum. The form or memorandum must be submitted directly to the LRO. The request must be submitted within thirty (30) days prior to the anniversary date of the signature on the Employee s SF-1187. If the request must be submitted within thirty (30) days prior to the anniversary date, then it will not be processed, and the Employee may not submit the form until within thirty (30) days prior to the Employee s next anniversary date.

9. The Union President may grant permission, in writing, to process an SF-1188 at times other than the above on the basis of the individual circumstances or financial hardship of the Employee. Decisions to make exceptions to the time requirements must be made in a fair and equitable manner. It is the responsibility of the Employee to obtain the permission.

10. The LRO will verify that the form SF-1188 is properly submitted and will ensure it is forwarded to the payroll office. Revocation of the Employee s voluntary dues allotment will be effected no later than two full pay periods following the Employee s anniversary date. The Union will be provided a copy of the Employee s memorandum, or the duplicate copy of the Employee s SF-1188 as applies. The Employer agrees to provide an SF-1188 to any Employee who requests the form.

11. The Employer agrees not to charge the Local or any Employee for the processing of voluntary dues allotment as described in this Article. The Employer further agrees to continue to provide this service as long as it is not against an order of a competent authority and the Local holds exclusive recognition.

ARTICLE 14

ORIENTATION OF NEW EMPLOYEES

The Parties are committed to orienting new Employees to their new work environment in such a way as to offer them the maximum potential for success.

1. The Employer will make arrangements for new Employees to participate in the USGS orientation program at the first offering of the program after their entrance-on-duty in the MIT. The Employer will notify new Employees when they are to attend the program.

2. The Steward who represents the new Employee s organizational subdivision will be authorized ½ hour of official time to introduce him/herself to the new Employee, provide the Employee with a copy of the current collective bargaining Agreement, and to explain the rights and obligations of the Union with regard to the representation of Employees. The discussion may also include the purpose, goals, and achievements of the Union. Under no circumstances will the Steward solicit Union membership during this meeting, and if asked by the Employee if he/she must join the Union or pay dues, the Steward will reply in the negative. However, the Steward may make arrangements to meet with the Employee on nonduty time during this meeting to discuss Union membership.

3. The Employer will furnish the Union with a supply of contracts necessary to provide them to new Employees.

4. The Employer will notify the Union of new Employees via e-mail. The notification will include the Employee s name, organizational assignment, telephone number, and reporting date. Notification of the Union will take place as soon as the reporting date is known.

ARTICLE 15

WORK WEEK, HOURS OF WORK, AND SCHEDULES

Effective May 1, 2000, section 1 of Article 15 is replaced with the following new section 1.

1. GENERAL. The work week, hours of work, and scheduling will be in accordance with the USGS Alternative Work Schedule (AWS), as described in USGS Policy Memorandum 00.01 and in the AWS policy and handbook, available on line at < http://www.usgs.gov:8888/ops/hro/benefits/aws/ >.

   [Old 1. GENERAL. The work week, hours of work, and scheduling will be in accordance with the GD Alternative Work Schedule (AWS) policy guidelines issued October 1997.]

2. SCHEDULE CHANGES. The Parties agree that schedules must occasionally be modified in order to meet official requirements, such as meetings, training, task deadlines, or unusual circumstances. Notice of short-term or unusual work requirements that require an Employee to fix their arrival, departure, and/or lunch times or change their AWS day off will be provided to Employees as far in advance as practicable. Short-term changes will not be considered precedent setting. Employees and the Union will be notified in writing at least seven (7) calendar days prior to the effective date of major changes to their work schedule such as the temporary or permanent suspension of AWS, or changes to an Employees AWS schedule of more than two pay periods.

   NOTE: Whenever possible, Employees on details will be allowed to remain on their current AWS schedule.

3. COMPRESSED WORK SCHEDULES. The parties agree that Employees elect to work compressed work schedules under the following provisions:

   a. Employees will request the change to compressed work schedule via written memorandum to their immediate supervisor. The request must include the fixed schedule to be worked; e.g., the arrival time, departure time, number of hours to be worked each day, and AWS day(s) off.

   b. Employees may not flex their arrival time, departure time, or lunch. Employees must take leave, compensatory time off, or existing credit hours in fifteen (15)-minute increments when arriving after the scheduled time, leaving early, or excluding lunch.

c. Employees may not earn credit hours.

d. Employees will be paid on holidays for the number of hours scheduled for that day, up to 10 hours.

e. All other provisions of the AWS guidelines in section 1 of this Article and other laws, regulations, and provisions of this Agreement will apply.

4. TIME AND ATTENDANCE RESPONSIBILITIES. In order for AWS to be successful, the Parties agree that Employees must cooperate in their selection of work schedules and application for leave and must limit the use of unscheduled leave to the fullest extent possible.

a. Employees who have flexible starting and ending times must be scrupulous in their accounting for time worked and absences. Employees will record their arrival and departure times (including departure and return related to an extended lunch) on a sign-in/sign-out sheet at the time they occur.

b. Supervisors are responsible for the proper monitoring of Employees attendance, adherence to procedures for the request and use of leave, and proper recording of time-and-attendance-related information. Supervisors are also responsible for effecting prompt and appropriate corrective measures in response to Employee neglect or abuse.

5. RELIGIOUS OBSERVANCES. The Parties agree that Employees may make arrangements in accordance with law, regulations, and provisions of this Agreement to earn credit hours or compensatory time for the purpose of then taking that time off when personal religious beliefs or obligations require that the Employee abstain from work during specified periods of the normal work day or work week.

6. TRAVEL. The Employer will attempt to schedule travel during the regular work schedule of the Employee. Time spent away from an Employee s official duty station in a travel status is considered hours of work for overtime purposes when the travel involves the performance of actual work while traveling, is incident to travel that involves the performance of work while traveling, is carried out under such arduous and unusual conditions that the travel is inseparable from the work, or results from an event that could not be scheduled or controlled administratively, including travel by an Employee to such an event and the return of the Employee to his/ her official duty station. The Employer will consider and will normally grant requests from nonexempt Employees who wish to stay an additional

night to avoid more than three (3) hours of travel during nonduty hours. Requests from exempt Employees will also be considered. Impact of travel status on AWS is covered by the AWS guidance.

Effective November 18, 1999, sections 7 and 8 of Article 15 are replaced by the following new section 7.

7. FLEXIPLACE. The Employer and the Union agree to the implementation of the USGS flexible workplace program as described in the Flexiplace Handbook. This handbook is available online at < http://www.usgs.gov:8888/ops/hro/benefits/flexplce/flexplce.html >.

[Old 7. WORK AT HOME. Requests to work at home must be in writing and will be considered on a case-by-case basis under the following guidelines:

a. Requests are submitted to the appropriate approving official through the Employee s supervisor and Division chain-of-command. The Employee must have a bona fide need to remain at home, such as a medical condition that prevents him/her from reporting to the work place or a communicable disease that is a health risk for other Employees.

b. In the case of a medical condition, the Employee has been released for the performance of work by his/her physician and has provided documentation of the release to the Employer.

c. The nonperformance of the work would result in failure of the Employer to meet mission goals or to accomplish mission-critical functions.

d. There is no one else available who can perform the work of the Employee.

e. The Employee s supervisor has a reasonable belief that the work can and will be accomplished at the Employee s home.

f. The duration of the work-at-home arrangement does not exceed three (3) calendar months. Employees will arrange their specific work schedule with their supervisor. The Employee s schedule may be a combination of reduced hours and appropriate leave while working at home.

g. Work at home will not be granted as a substitute for regular dependent care. However, in cases such as the illness or incapacitation of a family member, that require the Employee to be present at home, work at home may be approved if actual care is minimal, such as assistance in mobility, meal preparation, etc., or work is performed at a time other than when actual dependent care is

being provided.

Old 8. FLEXIPLACE. The Employer and the Union agree to formulate both general and specific guidelines within six (6) months of implementation of this Agreement.]

ARTICLE 16

MERIT SYSTEM PROMOTION AND DETAIL

1. PURPOSE AND POLICY.

   a. The purpose of this Article is to ensure that vacancies in the Bargaining Unit will be filled on the basis of merit, without discrimination for any other reason, such as race, color, sex, religion, age, national origin, political preference, labor organization affiliation or nonaffiliation, marital status, or nondisqualifying handicap. The filling of positions will be made in accordance with the merit system principles found in 5 U.S.C. 3301.

   b. It is agreed that the Employer will make every reasonable effort to use the skills and talents of Employees to the maximum extent possible to achieve mission goals.

   c. It is the goal of the Employer to strive to achieve a culturally diverse workforce that demonstrates a commitment to DOI/USGS diversity goals by improving gender, ethnic, racial, and disability composition of the organizations work force.

2. AREA OF CONSIDERATION.

   a. The minimum area of consideration will be departmentwide while the Career Transition Assistance Program (CTAP) regulations are in effect and there are special selection priority eligibles in the local commuting area of the position being filled. In addition, regulations governing the Reemployment Priority List and the USGS Repromotion Consideration Placement Assistance Program will be coordinated with the advertisement of Bargaining Unit positions. Otherwise, the area of consideration will be determined by the manager.

   b. When there are no special selection priority eligibles under Placement Assistance Programs for the position being filled, first consideration will be given in filling vacant positions to Employees. This will not prevent outside applicants from applying, provided they specifically apply for the vacancy being filled and are rated and ranked by the same merit promotion panel as Employees.

   c. An Employee who is absent for a legitimate reason, such as detail, leave, training, IPA, military service, etc.), will receive appropriate consideration for positions for which they indicate in writing prior to departure that they wish to receive consideration. The written request must contain a

resume, Form OF-612 Optional Application for Federal Employment, or other written application format and must be left with the Employee s supervisor and the USGS personnel office prior to departure.

3. ACTIONS COVERED BY COMPETITIVE PROCEDURES. Competitive procedures will apply to the following types of personnel actions involving Bargaining Unit positions:

   a. Promotions except for those listed in Section 4 of this Article.

   b. Temporary promotions for more than one hundred twenty (120) days.

   c. Details of more than one hundred twenty (120) days to higher grade positions or to positions with known promotion potential greater than the position last held.

   d. Selection for training that is given primarily to prepare employees for advancement and/or is required for promotion, such as Upward Mobility or other development programs.

   e. Reassignment or demotion to a position with greater promotion potential than a position last held on a permanent basis. (This normally happens during a RIF, which, by definition, is a competitive procedure.)

   f. Reinstatement to a permanent or temporary position at a higher grade or with higher promotion potential than any position previously held by the Employee on a permanent basis in the competitive service.

4. WHEN COMPETITIVE PROCEDURES DO NOT APPLY. Competitive procedures will not apply to the following types of personnel actions involving Bargaining Unit positions:

   a. Promotion resulting from upgrading a position without significant change in duties and responsibilities owing to issuance of a new classification standard or the correction of an initial classification error.

   b. Position change permitted by RIF regulations.

   c. Career promotion without current competition when, at an earlier stage, an Employee was selected under competitive promotion procedures for an assignment intended to prepare him/her

for the position being filled, such as Upward Mobility or other development programs and career ladders.

d. Career ladder promotion following noncompetitive conversion of a Student Career Experience Program Employee or a Presidential Management Intern or by filling a position through use of a Special Employment Program Appointing Authority; e.g., appointment of the handicapped, a Veterans Readjustment Program eligible, etc.

e. Change from a position having known promotion potential to one having no higher potential.

f. Temporary promotion or detail of one hundred and twenty (120) days or less to a higher grade or a position with known promotion potential.

g. Promotion to a grade previously held on a permanent basis from which an Employee was separated or demoted for other than performance or conduct reasons.

h. Priority consideration of a candidate not given proper consideration in a competitive promotion action.

i. Promotion as a result of a formal finding of discrimination under EEOC regulations or as directed by judge(s), arbitrator(s), or other appropriate authority(ies).

j. Selection of a candidate from the Reemployment Priority List or the USGS Repromotion Consideration Placement Assistance Program in accordance with appropriate regulations.

k. Promotion, reassignment, demotion, transfer, or reinstatement to a position having promotion potential no greater than the potential of a position an Employee currently holds or previously held on a permanent basis in the competitive service.

l. Promotion resulting from an Employee s position being reclassified at a higher grade because of additional duties and responsibilities (accretion of duties).

5. VACANCY ANNOUNCEMENT. All vacancies that are formally advertised under the USGS Merit Promotion Plan shall be appropriately publicized to ensure that all Employees have an equal opportunity to participate in the Merit Promotion Program.

a. Vacancy announcements will include a statement that the position is in the Bargaining Unit.

b. The quality ranking and selective placement factor Ability to communicate interpersonally and in writing will be used in lieu of Ability to communicate orally and in writing and will not be used to discriminate against deaf and hearing-impaired candidates.

c. Vacancy announcements must fully identify the position to be filled as to title, series, grade, organizational location, and whether permanent or temporary. If a position is announced as temporary and the announcement does not state that it may become permanent, then the position will be reannounced if it becomes permanent.

d. The quality ranking and selective placement factors for positions to be filled through merit promotion procedures shall be relevant to such positions.

6. EVALUATION PANELS.

a. An evaluation panel comprised of three subject matter experts will be used for positions with ten or more qualified applicants. Each candidate will be evaluated by using the quality ranking and selective placement factors identified by the Employer; consideration will also be given to awards received in the last five (5) years.

b. No member of the evaluation panel may transmit any information to any applicant or other unauthorized person.

7. PRIORITY CONSIDERATION.

a. USGS Repromotion Consideration Placement Assistance Program: Employees who are eligible for grade or pay retention are eligible for repromotion consideration if they have been affected by a RIF or their positions have been reduced in grade by reclassification. The grade or full performance level (FPL) of the advertised position must be higher than that of the employee s current position and must not be higher than the actual grade that the employee held immediately prior to effecting the action that made him/her eligible for this program. Employees must apply to a specific merit promotion vacancy announcement in their local commuting area by submitting an application/resume by the closing date and must specifically request consideration under the USGS Repromotion Consideration Placement Assistance Program on their application/resume.

Procedures for Repromotion Consideration

(1) Employees become eligible for repromotion consideration under this program upon the effective date of their retained grade or pay.

(2) Eligibility under this program ends two (2) years from the effective date of the action that placed them on grade or pay retention, or when grade or pay retention ceases, whichever occurs first.

(3) A separate referral list of basically qualified Repromotion Consideration Program candidates will be sent to the selecting official along with the merit promotion certificate. The selecting official may select or not select from either list and will provide a written statement documenting the basis for selection or nonselection on the appropriate form.

b. For Employees Not Given Proper Consideration: An Employee who was not given proper consideration because of a procedural violation or error in a previous competitive placement action will be given priority consideration for a period of six (6) months for the next appropriate vacancy (same title, series, grade, FPL, and duty station) before any recruitment action is initiated. This means the employee must be referred to the selecting official for consideration before using the competitive procedures. If selected on the basis of priority consideration, then the employee is promoted or reassigned noncompetitively.

Procedures for Priority Consideration

(1) Prior to issuance of a merit promotion announcement or request for a certificate of eligibles from the OPM, the Employer will provide the selecting official with a list of employees eligible for priority consideration.

(2) The selecting official will give bona fide consideration to those employees on the priority consideration list.

(3) The Employer will notify the employee of nonselection under priority consideration. Nonselection under this section will not preclude an employee from subsequent selection from the best qualified list for the same position.

8. SELECTION PROCEDURES.

a. All candidates on the best-qualified list will be referred to the selecting official in alphabetical order.

b. All candidates on the best qualified list will be interviewed. The Employer is responsible for conducting the interviews fairly and ensuring that interview questions are job related. The Employer will provide interpreting services for hearing-impaired and deaf candidates. Every effort should be made to obtain the same information from each candidate.

c. The selecting official has the right to select or not to select any candidate referred and will normally render a decision within twenty (20) work days after completion of all interviews. Selections will be made on the basis of merit factors relating to the job to be filled. The Employer will notify the Union when a selection is made outside the Bargaining Unit for placement in a vacant Bargaining Unit position.

d. In the case where no one is selected for an announced position, the Employer will document why no selection was made on the appropriate form and indicate whether any further recruitment action is necessary.

9. UNION REVIEW OF COMPETITIVE ACTIONS.

a. The Union will be permitted to conduct a review of the merit promotion file for a Bargaining Unit position in accordance with 5 U.S.C. 7114(b)(4) and the appropriate provisions of the Privacy Act.

b. The Union will provide the USGS personnel office with the name of the Union representative who is responsible for conducting the review and the reason for the review on a case-by-case basis. The representative designated to conduct the review will not have been an applicant for the promotion file being reviewed or be eligible for similar positions.

10. SUPERVISORY APPRAISAL. Employees may obtain supervisory appraisals from current or past supervisors and may obtain more than one, supervisory appraisal. However, the submission of a supervisory appraisal is not mandatory, but is strongly recommended.

11. NONSELECTED EMPLOYEE RIGHTS. An Employee may request information concerning any merit promotion announcement for which he/she applied for consideration or for which the Employee was entitled to priority consideration. That information may be obtained from the appropriate staffing

specialist and includes:

a. Whether the Employee met the qualification requirements for the position,

b. Whether the Employee was one of those in the group from which the selection was made,

c. Numerical point scores assigned to individuals as a result of the application of the crediting plan,

d. Who was selected, and

e. The reason that the Employee was not selected and in what areas, if any, the Employee should improve to increase chances of future promotion. This information should be requested from the selecting official.

12. CAREER LADDER PROMOTIONS. Employees within a career ladder who have received a Results Achieved rating on their most recent performance appraisal will normally be promoted to the next grade in the ladder when they have met time-in-grade requirements, demonstrated the ability to assume responsibility and perform at the higher grade, and work is available at the higher grade level on a continuous basis.

13. DETAILS/TEMPORARY PROMOTIONS.

a. Details of more than thirty (30) days shall be recorded in the Employee s Official Personnel Folder (OPF) for official credit and copies of the record forwarded to the Employee. Details of less than thirty (30) days will be documented by memorandum from the supervisor.

b. Temporary promotions may be made when an Employee is temporarily placed in a higher grade position, or in a position having known promotion potential when the Employee otherwise meets the qualifications for the higher level position. The Employee shall be paid commensurate with the position temporarily promoted to. Temporary promotions of more than one hundred and twenty (120) days will be made based on competitive procedures.

c. If there is more than one (1) qualified Employee who could perform the duties of a detail for one hundred twenty (120) days or less, then the Employer may solicit volunteers from all qualified candidates. The Employer is free to select from among volunteers without the benefit of competitive procedures.

d. The detail procedure shall not become a device to afford certain individuals an undue opportunity to gain qualifying experience or to prevent others from gaining such experience. Selection for details shall be based solely the requirements of the work and the qualifications of the selectee. The Employer agrees to consider the rotation of details to a higher level or in a different line of work among similarly qualified Employees on a fair and equitable basis.

DEFINITIONS

OPM Qualification Standards: Standards pertaining to work experience, voluntary experience, education, and training that a candidate must meet to be a basically qualified candidate for a position.

Selective Placement Factors: Knowledges, abilities, skills, and/or other characteristics (KASOCs) that are essential/mandatory for satisfactory performance on the job and that are requirements in addition to the OPM basic qualification standards for a position. They are used to determine a candidate s eligibility for consideration. If a candidate does not meet a selective factor, then he/she is ineligible for further consideration for the position.

Quality Ranking Factors: KASOCs that are expected to significantly enhance performance in a position and are identified as criteria for distinguishing the better candidates from among a group of minimally qualified applicants. These are desirable KASOCs, and if a candidate does not posses a particular quality ranking factor, then he/she is still eligible to be considered for the position.

Minimally Qualified Candidates: Those who meet the OPM qualification standard, as well as the minimum level of all selective placement factors.

Best Qualified Candidates: Those basically qualified candidates who rank at the top when compared to other qualified candidates for a position by evaluation of the candidate s qualifications with selective placement and quality ranking factors.

Promotion Committee: A minimum of three individuals with subject matter expertise relative to the position being filled will evaluate qualified candidates on the basis of the KASOCs. The end product of the committee is the merit promotion certificate.

Merit Promotion Certificate: A list prepared by the USGS personnel office or chairman of the promotion committee that identifies, in alphabetical order, the best qualified candidates for a specific vacancy announced under merit promotion procedures.

Career Ladder: The grade range from the entry level through and including the FPL for an occupation. Promotions in the career ladder are made noncompetitively after competitive entry into the occupational career ladder.

Full Performance Level: The highest nonsupervisory level to which an employee may be promoted

through successive noncompetitive career promotions if the employee is one of a group in which all employees are given grade-building experience and demonstrate ability to perform at the next higher level and if there is enough work at the FPL for all employees in the group.

ARTICLE 17

TRAINING AND EMPLOYEE DEVELOPMENT

1. COMMITMENT TO TRAINING. The Parties recognize the value of a well-trained work force and the need for a well-planned and well-executed employee development program. The Parties agree that training efforts are to be aimed at improving job performance, providing for career development opportunities, and meeting the needs created by evolving technologies, changes in mission requirements or positions, and any special work-related needs of the Employees.

2. EMPLOYER S ROLE. The Employer agrees to administer a training and Employee development program that addresses immediate and long-range individual and organizational training requirements, and provides for the systematic identification of those needs in conjunction with the performance appraisal process. The Employer agrees to focus all available resources to the accomplishment of the following objectives:

   a. Improvement of the performance of official duties as necessary in the Employees present positions;

   b. Continuous development of Employee knowledge, skill, and ability to meet changing requirements now and for the future;

   c. Opportunities for performance improvement to achieve and/or maintain acceptable standards of performance for Employees whose performance in their current position is less than Results Achieved, or who are struggling because of lack of training.

   d. Support for the planned upward mobility of Employees at the GS-9 level and below through appropriate development mechanisms; and

   e. Assistance for Employees adversely affected as a result of reorganizations, RIFs, or personal disability to the extent allowable by law and regulations and within budget restraints.

3. EMPLOYEE S ROLE. As a part of the performance appraisal process, each Employee will make known to his/her supervisor any training and/or development needs that the Employee proposes for the upcoming performance year. This information should include training and development that the Employee believes would improve his/her ability to perform their current duties and to develop

competencies required to meet the future needs of the organization, as well as any career development assistance that the employee would like to receive from the Employer. The supervisor will review the needs expressed by the Employee and will finalize to include any further needs that he/she deems appropriate in keeping with the overall objectives of training and employee development outlined above.

Employees are responsible for the following:

a. Obtaining necessary approvals for requested training as far in advance of the course as is possible and keeping track of scheduled and approved training so attendance is assured.

b. Assuring that workload requirements are met in advance of scheduled training so that the absence from the worksite does not adversely affect mission accomplishment.

c. Fully participating in the provided training by attending all sessions on time, and remaining present until dismissed by the instructor, returning from breaks and lunch in a timely manner, performing exercises and tests, and participating in group workshops and exercises.

d. Using the resulting knowledge, skill, and/or ability obtained to the maximum extent possible in the performance of their duties and sharing as appropriate with coworkers, supervisors, and customers in situations where progress and/or overall performance improvement will result.

e. Notifying the supervisor promptly in the event attendance at an approved training class, conference, or symposium will not be possible so that the Employer may make maximum benefit of the opportunity and expenditure of funds by meeting refund deadlines or sending another Employee.

4. TRAINING ANNOUNCEMENTS. The Employer will maintain and make available current information on training sources available to Employees. Employee input into identifying possible sources of training is encouraged.

5. EQUAL OPPORTUNITY. Selection and approval for training will be accomplished in a fair and equitable manner and in accordance with the principles, policies, and provisions of this Agreement that provide for nondiscrimination. Employees who were denied training on the basis of budget constraints and/or work priorities shall be afforded first consideration for subsequent offerings.

6. EMPLOYEE SELF DEVELOPMENT. The Employer encourages all Employees to enroll in educational and developmental programs on their own time and in pursuit of their own interests. To the extent that such efforts are related to the mission and functions of the Employer and meet applicable provisions of law and regulations, the Employer agrees to provide assistance to the Employee, such as work schedule adjustments and financial support.

7. SCHEDULING. The Employer agrees to schedule training, meetings, seminars, and conferences during core hours, as appropriate, to the fullest extent possible. However, Employees are reminded that they are to report for the full scheduled day when attending conferences or training.

8. EXPENSES. The Employer agrees to extend every possible consideration to the reimbursement of expenses incurred by an Employee in attendance at officially authorized and approved training, meetings, conferences, etc. Clarification as to what expenses can be reimbursed should be sought by the Employee prior to attendance.

9. USE OF EQUIPMENT. Employees may use academic aids, such as calculators and computer equipment, when available and on the USGS premises, at mutually agreeable times during the employee s off-duty hours in support of officially authorized and approved training courses. Employees must obtain supervisory approval prior to use.

10. UPWARD MOBILITY. The Employer agrees to make efforts to identify appropriate vacancies as developmental positions under the provisions of upward mobility regulations or as career ladders under the merit promotion system and to provide the necessary training and development to ensure that the incumbent has a full and fair opportunity for successful performance.

11. FORMAL DEVELOPMENT PROGRAMS. The Employer agrees to develop and implement formal development programs as appropriate to provide long-term training opportunities at lower grade levels and in anticipation of future strategic staffing needs. Such programs will provide the participants with an opportunity to develop a comprehensive understanding of the MIT operations and functions through rotational assignments and appropriate training or academic course work. Among the program objectives will be the professional development of employees in order that they may progress into various career fields or occupational series upon program completion. Guidelines and operating procedures will be developed by the Employer and the USGS servicing personnel office. The Union will be afforded the opportunity to provide input into the development of guidance and procedures, and the Employer agrees to give due consideration to suggestions provided by the Union. The Employer agrees to give first consideration for development program vacancies to Employees. If sufficient

candidates are not available, then the Employer will broaden the area of consideration to obtain additional candidates. The Employer will inform the Union if expansion of the area of consideration becomes necessary. The flexibilities in the provisions of applicable laws and regulations including 5 CFR 410, will be used to the fullest extent possible to afford the Employees the maximum benefit.

ARTICLE 18

EQUAL EMPLOYMENT OPPORTUNITY

1. POLICY. The Parties shall not in any way discriminate in favor of or against any individual regarding employment or conditions of employment because of race, color, religion, sex, national origin, age, mental or physical disability, marital status, sexual orientation, politics, or any other criteria that are not job related, including favoritism based on a personal relationship or patronage.

   The Parties recognize, support, and agree to adhere to the Zero Tolerance of Discrimination policy established by the (DOI) and the (USGS), the Equal Employment Opportunity (EEO) Act, the Civil Service Reform Act, and other controlling laws and regulations.

2. EEO COUNSELORS. The name, location, and phone number of each USGS EEO counselor will be posted at sites where Employees are located. Employees and their representative will be given a reasonable amount of official time to discuss allegation(s) of discrimination with a USGS EEO counselor in accordance with the official time provisions of this Agreement.

3. EEO INFORMATION. The Employer will provide the Union with copies of those portions of its Affirmative Employment Plan that pertain to Employees. The Employer will grant the Union access to all published EEO regulations and policies applicable to the Employer upon request.

ARTICLE 19

SEXUAL HARASSMENT

1. The Employer acknowledges that sexual harassment undermines the integrity of the Federal Government and will not be condoned. Merit system principles require that all employees be allowed to work in an environment free from sexual harassment. Further, sexual harassment is a prohibited personnel practice when it results in discrimination for or against an employee based on conduct not related to performance, such as the taking or refusal to take a personnel action, including promotion of employees who submit to sexual advances or refusal to promote employees who resist or protest sexual advances.

2. Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

   a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual s employment,

   b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or

   c. Such conduct has the purpose or effect of unreasonably interfering with an individual s work performance or creating an intimidating, hostile, or offensive working environment.

3. An employee may seek the services of an EEO counselor to process the employee s complaint of sexual harassment. The complaint will be processed in accordance with the provisions contained in 29 CFR 1614.104 through 29 CFR 1614.110 and the instructions for complaint processing contained in the Equal Employment Opportunity Commission s Management Directive 110. The Employer agrees to honor to the fullest extent possible within available resources any counselor preference the Employee may have.

4. If an Employee elects not to contact an EEO Counselor, the employee may contact the immediate supervisor, Section Chief, Chief Scientist, the servicing employee relations specialist, or the USGS Labor Relations Officer to report incidents of sexual harassment. Upon such contact, the Employer will immediately conduct an inquiry into the matter. In determining whether the alleged conduct constitutes sexual harassment, the Employer will look at the record as a whole and the totality of the

circumstances, such as the nature of the sexual advance(s) and the context in which the alleged incident(s) occurred. The Employer agrees to take prompt action to protect its Employees from such activity when it is determined that there is merit to the allegations of sexual harassment.

5. Individuals, who in good faith, report violations of DOI/USGS sexual harassment policy are assured of freedom from restraint, interference, coercion, discrimination, or reprisal for reporting violations, and any employee found to have violated this assurance shall be disciplined pursuant to Federal regulations.

   The Parties agree that because of the nature of complaints of sexual harassment and the provisions of law that require discipline for individuals who violate sexual harassment policy, it is normally in the best interest of the complainant to settle complaints informally without the need for formal proceedings that may cause embarrassment or duress for him/her. The Employer agrees to work quickly to provide reasonable accommodations to the complainant when the results of the investigation of the complaint so warrant. The Parties agree that the confidentiality of information related to the complaint, the investigation, and any resulting resolution are paramount to the effective handling of these types of complaints.

   Nothing in this paragraph shall be interpreted as limiting or prohibiting an employee from exercising his/her right to file a formal complaint of sexual harassment through either the EEO procedures or under the negotiated grievance procedures contained in this Agreement. However, if a grievance filed under the negotiated procedures results in arbitration, then the scope of the arbitration will be limited to determining if a violation of sexual harassment policy has taken place, by whom the policy was violated, and the appropriate personal relief for the grievant. The Employer retains the right to determine the appropriate disciplinary action to be taken against whomever was determined to have violated the sexual harassment policy.

6. The Employer agrees to provide access to the EEOC Guidelines on sexual harassment to the Union upon request.

ARTICLE 20

PERFORMANCE APPRAISAL SYSTEM

1. POLICY. It is the policy of the Employer that the performance appraisal process will be an integral part of the rating official/employee relationship involving ongoing communication concerning performance. All date requirements for establishing plans and completing progress reviews and appraisals will be met.

2. COMPONENTS OF EMPLOYEE PERFORMANCE PLAN.

   a. Critical Result means a mission-based outcome or endproduct that is essential to the overall success of the position. It is a work assignment or responsibility that is critical to the accomplishment of organizational goals and objectives and critical to overall success in the employee s position. Critical results may be either individual results, or they may be the employee s responsibility for team or organizational results. Critical results focus on the results or outcomes an employee is expected to achieve and may be revised at any time to reflect changes in program, priorities, resources, or other factors.

   b. Performance Indicators are the predetermined quality, teamwork, and customer- satisfaction measures by which the employee s performance in each critical result will be assessed. It is a statement of the performance expectations or requirements necessary for achieving the critical results of the position. The purpose of performance indicators is to let the employee and the rating official know those qualities that are important to successful performance in each critical result.

   c. Together, critical results and performance indicators make up the Employee Performance Plan. All performance plans shall be consistent with the duties and responsibilities of the employee s current position description, except in unusual circumstances, such as when an employee is assigned to unclassified duties for short periods of time or on details of less than ninety (90) days.

   d. The Employer agrees that the Union has an interest in the performance plan established for various occupations of unit Employees. The Employer further agrees to notify the Union prior to the development and revision of model performance plans and to give consideration to the Union s ideas and suggestions.

3. DEVELOPMENT OF PERFORMANCE PLAN.

a. Each Employee will participate with the rating official in the development of his/ her performance plan. Groups of Employees, where appropriate, can work together to draft a single performance plan or to comment on a draft performance plan that would be applicable to all. Rating officials and Employees are expected to communicate to the extent necessary to ensure common understanding of each critical result.

b. The performance plan is in effect on the date it was signed by the rating official. Each Employee shall be provided a copy of his or her performance plan on the effective date. Employees cannot be evaluated against the plan until the plan is in effect.

c. The rating period for the MIT is 1 October to 30 September. A performance plan must be prepared within sixty (60) days after the beginning of the rating period or within sixty (60) days after the Employee has a significant change in critical result, e.g., by reassignment to a position with different duties.

4. PROGRESS REVIEWS. A progress review is a discussion between the rating official and the Employee to review the Employee s progress toward achieving critical results, to make any necessary revisions in critical results, and to consider any developmental needs or performance improvement required.

a. At least two progress reviews will be conducted during the rating period. There is no mandatory timing for these progress reviews. Progress reviews should be spaced during the rating period so the rating official and the Employee have a clear and ongoing understanding of the Employee s progress, any assistance needed, and/or any changes that should be made to the performance plan. The rating official will also conduct progress reviews with Employees at any time during the rating year if the Employee is not achieving critical results. Progress review information will be considered in determining the annual appraisal.

b. Although not required, the rating official is encouraged to make notes about what the Employee has accomplished as a way of recognizing the Employee s efforts and recording information that can be used in preparing the Employee s summary rating at the end of the rating period.

c. At any time during the appraisal period that an Employee s performance falls to the Results Not Achieved level on any critical result, the rating official must notify the Employee immediately.

Documentation is required on the performance plan, and the rating official must prepare a separate narrative that describes how the employee is failing in the critical result(s) and how the he/she must improve in order to achieve the critical result(s). The rating official must give a copy of the narrative to the Employee, keep a copy, and provide assistance to the Employee in achieving critical results. The Employer has the right to place the Employee under a formal performance improvement plan (PIP).

5. PERFORMANCE APPRAISALS.

a. Performance appraisals shall be made in a fair and equitable manner in accordance with 5 U.S.C. 4302 and 370 DM 430.

b. Appraisals shall be prepared annually. The appraisal shall be prepared and a copy provided to the Employee within sixty (60) days of the close of each Employee s appraisal period.

c. Employees must work under a performance plan for least ninety (90) days in order to be rated. Employees will be evaluated only for work actually performed or work reasonably expected to be performed during the rating period. An Employee s performance appraisal will not be adversely affected by work that he/she did not have an opportunity to perform. The Employee is responsible for making the rating official aware of any work-related factors outside the control of the Employee which impaired achievement of the critical result(s). The rating official must indicate Not Rated for the appropriate critical result(s) for work not assigned or not completed through no fault of the Employee.

d. The rating official must solicit Employee input before drafting annual performance appraisals. Employees are encouraged to provide input as a means to ensure the rating official is fully aware of the accomplishments and contributions made by the Employee during the performance appraisal period. A copy of any statistical data used in the appraisal will be provided to the Employee at the same time as the appraisal.

e. Employees will receive their performance appraisal (signed by the rating official) at the official performance appraisal interview. At that time, the Employee shall be asked to sign that he/she has received the rating (the Employee is signifying only that he/she has received a copy, not that he/she agrees or disagrees with the rating). Employees may add comments and supporting documentation to their official performance ratings.

f. Employees who receive a Results Not Achieved summary rating will be given a formal performance improvement plan (PIP) and an opportunity period in which to demonstrate acceptable Results Achieved performance before the Employer can propose a performance-based action.

6. RESOLUTION OF PERFORMANCE DISPUTES.

a. Informal. Employees who are dissatisfied with their appraisal should bring their concerns to the attention of the rating official during the official performance appraisal interview. The rating official and Employee should make every attempt to resolve the concerns informally. If the Employee prefers to delay discussion of the concerns related to the appraisal in order to gather supportive documentation and/or prepare a written rebuttal, as described below, then he/she should inform the rating official at the appraisal interview and schedule a time for further discussion.

(1) The scheduled appointment or the submission of the written rebuttal should be within five (5) work days.

(2) At the Employee's request, any rebuttal submitted may also be filed in the Employee's Employee Performance File (EPF) along with the appraisal.

(3) Written rebuttals should contain specific examples of the Employee's performance related to each critical result and must be received by the rating official within five (5) work days.

(4) The rating official will respond within five (5) work days of the meeting and/or receipt of a written rebuttal.

b. Formal. Employees may file a formal grievance within twenty (20) work days after receipt of the summary rating under the negotiated procedure contained in the Agreement. However, the Parties agree that informal resolution of performance appraisal disputes is the preferred approach and that Employees are obligated to bring their concerns to the attention of the rating official prior to filing a formal grievance.

ARTICLE 21

WITHIN-GRADE INCREASES

1. A within-grade increase (WGI) will be granted to an Employee if his/her performance is at an acceptable level of competence (ALOC), he/she has completed the required waiting period, and he/she has not received an equivalent increase during the waiting period. To be determined at an ALOC, the Employee s most recent rating of record, as documented on the Employee Performance Plan and Form DI 2002, Results Report, must be at the Results Achieved level [CFR 531.404 (a)]. The rating of record used as the basis for an ALOC determination must have been assigned no earlier than the most recently completed appraisal period (5 CFR 531.404(a)(2)).

   Employees whose current performance appraisal is Results Achieved may be granted a WGI without further documentation. The employee will receive a Form SF-50, Notification of Personnel Action, documenting the granting of the WGI.

2. The Employer will prepare a new rating of record [5 CFR 531.404(a)(1)] when a WGI decision is not consistent with the Employee s most recent rating of record and forward a copy to the Personnel Office with the ALOC determination.

3. Employees whose performance is at the Results Not Achieved level will not be granted a WGI. The Employer will notify the Employee in writing of the negative level of competence determination as soon as possible after completion of the waiting period for the WGI. The WGI will be denied until performance improves to the Results Achieved level. The contents of the negative determination notice will:

   a. Set forth the reasons for the negative determination;

   b. Describe what the Employee must do to improve his/her performance in order to be granted a WGI;

   c. Inform the Employee of his/her right to request a reconsideration of the negative determination by the reconsideration official [5 CFR 351.409(e)(2)(i)&(ii)]; and

   d. Identify the reconsideration official.

4. RECONSIDERATION OF NEGATIVE DETERMINATION.

a. The Employee may request reconsideration of a negative determination within fifteen (15) calendar days after receiving notice of a negative determination. The Employee must submit a written request to the reconsideration official, identified in the negative determination notice, stating the reasons why the reconsideration official should reconsider the negative determination [5 CFR 531.410(a)(1)]. The request should also contain any supporting data that the Employee wishes to have considered.

b. An employee is entitled to have a representative of his/her own choosing when presenting his/her request.

c. With prior supervisory approval, an Employee in a duty status may use up to four (4) hours of official time to review the material relied on to support the negative determination and to prepare a request for reconsideration [5 CFR 410(a)(3)].

d. If the reconsideration is favorable to the Employee, then the Employees WGI will be granted retroactive to the original due date. The USGS Personnel Office will take the necessary action to process the WGI and to provide a Form SF-50, granting the WGI to the Employee [5 CFR 531.412(a)].

e. When a negative determination is sustained after reconsideration, the employee will be informed in writing within fifteen (15) calendar days after receipt of his/her request for reconsideration of the reasons for the decision and of his/her right to appeal the decision through the negotiated grievance procedure [5 CFR 531.410(d)].

5. CONTINUING EVALUATION AFTER WITHHOLDING A WGI.

a. When a WGI has been withheld, at any time thereafter, when the Employer determines that the Employee has demonstrated sustained performance at the ALOC, the WGI may be granted. The Employer must prepare a new rating of record for the Employee and certify in a memorandum to the USGS Personnel Office that the Employee is performing at an ALOC and that the WGI should be granted (5 CFR 531.411). The effective date of the WGI will be the first day of the first pay period after the acceptable determination has been made (5 CFR 531.412). The USGS Personnel Office will take the necessary action to produce a Form SF-50, granting the WGI.

b. The Employer must make a determination regarding the Employee s ALOC after no more than fifty-two (52) weeks following the original eligibility date for the WGI and, for as long as the WGI continues to be denied, must make a determination after no longer than each fifty-two (52) calendar weeks (5 CFR 531.411).

(1) If the redetermination is favorable, then the Employer will take action as described in paragraph a above.

(2) If the redetermination is negative, then the Employer will prepare a negative determination notice, using the same procedures as for the original notice determination. The Employee has the same rights to reconsideration and to grieve that he/she did when the original negative determination was made.

ARTICLE 22

ACTIONS BASED ON UNACCEPTABLE PERFORMANCE

1. Pursuant to 5 U.S.C. 4303, an action based on unacceptable performance, for the purpose of this Article, is the reduction in grade or removal of an Employee whose performance is at the unacceptable (Results Not Achieved) level. Unacceptable performance means the performance of an employee that fails to meet established performance standards in one or more critical result(s) of his/her position [5 CFR 432.103(h)].

2. Prior to issuing a notice of proposed action based upon unacceptable (Results Not Achieved) performance, the Employer will provide the Employee an opportunity to demonstrate acceptable (Results Achieved) performance 5 CFR 432.104 and 370 DM 430.3.6). The Employer will provide a written notice to the Employee, in the form of a PIP which will:

   a. Cite the critical result(s) for which performance is unacceptable.

   b. Give specific instances of unacceptable performance related to the critical result(s).

   c. Cite the performance standards and describe the performance requirements that must be met in order to demonstrate performance at the acceptable (Results Achieved) level for each critical result in which the Employee s performance is unacceptable.

   d. Describe the appropriate assistance that will be provided by the Employer to help the Employee improve his/her performance to the acceptable level.

   e. State that the Employee will be given at least a ninety (90)-day opportunity to demonstrate acceptable (Results Achieved) performance in his/her position. The actual time period will be based on the type of duties required by the position.

   f. Inform the Employee that unless his/her performance in the critical result(s) improves to and is sustained at an acceptable level, the Employee may be reduced in grade or removed [5 CFR 431.104/370 DM 430.3.6].

   g. Provide for notification to the Employee during the PIP when the PIP requirements are not being met.

NOTE: Neither the Union nor the Employee may grieve the notice described above. This does not preclude an appropriately filed grievance on the performance appraisal. The PIP will normally not be delayed pending the outcome of such a grievance.

3. At the end of the opportunity period specified in the PIP, the supervisor will reevaluate the Employee s performance.

   a. If it is determined that the Employee s performance improved to the acceptable level (Results Achieved), then the supervisor will notify the Employee in writing that:

      (1) His/her performance has improved to the acceptable level;

      (2) His/her performance must be sustained at the acceptable level in the critical element(s) for which he/she was given an opportunity to improve; and

      (3) He/she may be subject to a removal or reduction in grade under 5 CFR 432 if performance again becomes unacceptable in the same critical result within one (1) year without the benefit of an additional improvement period.

   b. If it is determined that the Employee s performance during or following the PIP remains at the unacceptable (Results Not Achieved) level in the critical result(s) for which the Employee was afforded an opportunity to demonstrate acceptable performance [5 CFR 432.105(a)], then the supervisor will give the Employee a written thirty (30)-day advance notice of proposed action, reduction in grade or removal.

      (1) The advance notice of proposed action will cite [5 CFR 432.105(4)(i)]:

         (a) The critical result(s) of the Employee s position involved in each instance of unacceptable performance.

         (b) The specific instance(s) of unacceptable performance by the Employee on which the proposed action is based.

         (c) The Employee s right to representation by an attorney or other representative.

(d) The Employee s right to answer the notice orally and in writing within fifteen (15) calendar days of his or her receipt of the notice. Requests from an Employee or the Employee s representative for extensions of the time limits for replying to notices of proposed action will be considered on a case-by-case basis.

(e) The name and title of the designated deciding official to whom the response is to be made.

(2) If an Employee makes an oral reply, then the Employer will prepare a summary of the oral reply, and will provide a copy to the Employee and/or the Union representative upon request. At the Employee s request, a local Union representative may be present.

(3) The advance notice period may be extended for a period not to exceed thirty (30) additional calendar days by the Chief Scientist, MIT, or his/her designee.

c. If an Employee s performance within one (1) year following an opportunity to improve becomes unacceptable in the same critical result(s) for which the Employee was given the opportunity to improve, then the Employer may propose reduction in grade or removal without giving the Employee an additional opportunity to demonstrate acceptable performance.

d. If an Employee performs at the acceptable level for one (1) year or more from the beginning of the notice of opportunity to improve, and the Employee s performance again becomes unacceptable, the Employer shall afford the Employee an additional opportunity to demonstrate acceptable performance before deciding whether to propose reduction in grade or removal.

e. If the Employee s performance improves during the performance improvement period and he/she is not reduced in grade or removed, then any entry or other notation of the unacceptable performance will be removed from any record relating to the Employee after one (1) year of acceptable (Results Achieved) performance [5 USC 4303(d)].

4. The decision to reduce in grade, remove, or retain an Employee must be made within thirty (30) calendar days after the expiration of the notice period. Decisions to reduce in grade, remove, or retain must be based on matters specified in the notice of proposed action. The deciding official must:

a. Be at a higher level in the organization than the proposing official,

b. Render a written decision that:

(1) Considers any answer of the Employee and/or his or her representative in response to the Bureau s proposal;

(2) Is based only on those instances of unacceptable performance that took place during the one (1)-year period ending on the date of issuance of the advanced notice of proposed action;

(3) States the effective date of the action and is issued to the Employee at least five (5) calendar days before the time the action will be effective;

(4) Specifies the instances of unacceptable performance by the Employee on which the action is based; and

(5) Informs the Employee of his/her appeal and/or grievance rights.

5. If the Employer s final decision is to effect an action based on unacceptable performance against an Employee, then the Employee may appeal the decision to the MSPB, file an EEO complaint in accordance with applicable law, file an ADR appeal, or file grievance under the negotiated procedures and is entitled to Union representation as appropriate.

6. If the Employee wishes the Employer to consider any medical condition that may contribute to a performance problem, then the Employee may furnish medical documentation of the condition during the time period for reply [5 CFR 432.105(a)(4)(i)(c)(iv)]. At the time a decision is rendered, the Employer will provide the Employee with information about disability retirement if the Employee has the requisite years of service [(5 CFR 752.404(c)(3)]. An Employee s application for disability retirement shall not preclude or delay any other appropriate personnel action. Where an application for disability retirement of an Employee is approved, the Employee, at his/her option, may use any available sick leave, if the Employee is on the USGS rolls at the time of the approval.

ARTICLE 23

DISCIPLINARY AND ADVERSE ACTIONS

1. POLICY. The Employer endorses and adopts the concept of progressive discipline. The procedures described in this Article will be used for disciplinary and adverse actions and, when practical, will be taken on a progressive and constructive basis. Employees will normally be given oral warnings and/or written counseling prior to the administration of formal disciplinary measures.

   The Parties agree that emphasis should be placed on preventing situations that may result in disciplinary action. The Parties also agree that the objective of disciplinary measures is to correct, rehabilitate, and maintain discipline and morale among the other employees. Accordingly, it is the policy of the Employer that the minimum penalty that can reasonably be expected to achieve these objectives will be administered. However, nothing in this Agreement shall preclude the Employer from imposing more-severe disciplinary action, when deemed appropriate for a major offense, based on the individual circumstances of a given case.

   All formal disciplinary actions shall be effected in a prompt, fair, and equitable manner with each Employee s rights fully protected. In deciding what, if any, penalty is appropriate, the Employer should consider the Douglas factors listed below and any other factors that may be relevant in the particular case.

   Douglas factors

   The nature and seriousness of the offense and its relation to the employee s duties, position, and responsibilities.

   The employee s job level and type of employment, including supervisory or fiduciary role.

   Any past disciplinary record.

   The past work record, including length of service, performance, ability to get along with fellow employees, and dependability.

   The effect of the reasons for action on the employee s ability to perform satisfactorily and on supervisor s confidence.

Consistency of the penalty with those imposed on other employees for the same or similar offenses.

Consistency of the penalty with any applicable agency table of penalties.

The notoriety of the offense or its impact on the agency s reputation.

The clarity with which the employee was on notice of any rules violated in committing the offense or had been warned about the conduct in question.

Any potential for rehabilitation.

Mitigating circumstances surrounding the offense.

The adequacy and efficacy of alternative sanctions to deter such conduct in the future by the employee or others.

No Employee will be the subject of an adverse action except for reasons that will promote the efficiency of the Federal service. Discipline of Employees will be consistent with applicable laws, regulations, and this Agreement and will be administered in a fair and equitable manner.

2. DISCIPLINARY ACTIONS. A disciplinary action for the purpose of this Article is a written warning or reprimand.

   a. Written Warning. A written warning is a statement given to an Employee for an act of misconduct or performance deficiency when oral warnings and/or written counseling has not resulted in improvement or is not expected to do so. A written warning will be in the form of a memorandum describing the reasons for the warning and will notify the Employee of a standard, which if not adhered to, may result in more-severe disciplinary action being imposed.

      The warning will not be placed in the Employee s Official Personnel Folder (OPF), but will be retained in the Employer s files for six (6) months. The warning will be removed from the Employer s files and destroyed under the following circumstances:

      (1) After six (6) months if no further action has been taken based on the warning;

(2) When the Employee leaves the DOI in less than six (6) months; or

(3) Within less than six (6) months if the Employee s improvement of conduct or performance so warrants.

The warning may be retained in the Employer s files for an additional six (6) months from the date of any additional misconduct which takes place during the original six (6)-month warning period. An Employee may not grieve the receipt of a warning letter, its content or the supervisors decision not to remove the warning letter earlier than the expiration date. However, the Employee may appeal to the ADR Committee. The Employee will be provided two (2) copies of their letter of warning. The additional copy may be provided to the Employee s Union representative at the Employee s discretion.

b. Reprimand. A reprimand is a statement of censure in the form of a letter given to an Employee for misconduct, or misconduct coupled with unacceptable performance, of such concern that a semipermanent record of the incident should be established. This censure may also be given owing to repetitive minor incidents of misconduct or performance deficiencies for which the Employee has already been counseled.

The official Letter of Reprimand will:

(1) Describe the reasons for its issuance;

(2) Advise the Employee that a copy of the reprimand and any written explanation that he/she may furnish will be placed in his/her OPF;

(3) Explain the Employee s right to Union representation;

(4) Explain the right to grieve the issuance of the reprimand under the negotiated grievance procedure; and

(5) A statement of the withdrawal provisions.

The reprimand will remain in an Employee s OPF for one (1) year from the date on the letter. The reprimand will be withdrawn from the OPF and destroyed under the following circumstances:

(1) After one (1) year if no further misconduct has taken place nor action has been taken on the case;

(2) When the Employee leaves the DOI within the one (1)-year period (except in a transfer of function); or

(3) Any time within the one (1)-year period if the Employer determines that the Employee s conduct so warrants.

The reprimand may be retained in the OPF for an additional one (1) year period from the date of any additional misconduct which takes place during the original one (1)- year period. The Employee will be provided two copies of the letter of reprimand. The additional copy may be provided to the Employee s Union representative at the Employee s discretion.

3. ADVERSE ACTIONS. An adverse action for the purpose of this Article refers to a suspension, removal, or reduction in grade or pay not at the Employee s request or a furlough of thirty (30) days or less. The following procedures will be followed:

a. Suspension for Fourteen (14) Calendar Days or Less. An Employee against whom a suspension of fourteen (14) calendar days or less is proposed is entitled to:

(1) A fifteen (15)-calendar-day advance written notice that provides the following information:

(a) The specific reason(s) for the proposed action, including regulatory or legal cites;

(b) An explanation of the Employee s right to be represented by an attorney, Union, or other representative;

(c) An explanation of the Employee s right to answer orally and/or in writing within ten (10) calendar days after receipt of such notice and to submit affidavits or other evidence in support of his/her answer, including medical documentation (as defined in 5 CFR 339) to support any medical condition alleged to have contributed to the misconduct upon which the proposed suspension is based;

(d) The name and title of the management official (deciding official) to whom any response(s) should be addressed and who will make the final decision; and

(e) A statement signed by the Employee to acknowledge his/her receipt of the letter and the date of the receipt.

(2) Review or have a designated representative review the material relied upon to support the reason(s) given in the proposed suspension notice and receive a copy upon request. (The name and address of the person who can arrange the review will be included in the proposal notice.)

(3) Be approved for a reasonable amount of duty time based on the complexity of the case to review all the evidence and the material relied on to support the charge(s), to secure affidavits or other written statements, and to prepare an answer to the notice. In order to use official time, the Employee must be in a duty status and must obtain approval in advance from the immediate supervisor.

(4) A written decision at the earliest practicable date that:

(a) Considers only the reason(s) specified in the notice of proposed action;

(b) Considers any response made by the Employee or the Employee s representative, any medical or other documentation furnished, and any entitlement to reasonable accommodation under 29 CFR 1614.203(c);

(c) Specifies the reason(s) for the decision; and

(d) Specifies the Employee s rights to file a grievance under the negotiated procedure or an EEO complaint of discrimination and to Union representation; and

(e) Includes a statement to be signed by the Employee to acknowledge his or her receipt of the letter and the date of the receipt.

The Employer will deliver the notice of decision specifying the date of suspension at or before the time the action will be effective. The Employee will be provided two (2) copies of the decision. The additional copy may be provided to the Employee s Union representative at the Employee s discretion.

b. Suspension for More Than Fourteen (14) Calendar Days, Removal. Reduction-in-grade or Pay,

or Furlough for Less Than Thirty (30) Days.

The Employee entitlement and notice content for these actions will include the items described in Section 3 above, with the following exceptions or additions:

(1) The Employee will receive thirty (30) days advance written notice unless there is a reasonable cause to believe that the Employee has committed a crime for which a sentence of imprisonment may be imposed [5 CFR 752.404(d)(1)] or the furlough without pay is due to unforeseeable circumstances or sudden emergencies requiring immediate curtailment of activities [5 CFR 752.404(d)(2)]; and

(2) The received written decision will state the Employee s right either to appeal the decision to the MSPB or EEOC if applicable, or to file a grievance under the negotiated grievance procedures, but not both. The Employee will also be informed 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 that the Employee files a timely formal grievance in writing or an appeal under applicable procedures.

The Employer will deliver the notice of decision at or before the time the action will be effective. The Employee will be provided two copies of the decision. The additional copy may be provided to the Employee s Union representative at the Employee s discretion.

c. Actions by the Deciding Official. The deciding official will base the decision upon the evidence available. If the deciding official determines any of the charges cited in the proposal notice are not sustained by the evidence, then those charges may not be relied upon in deciding on the appropriate action. The deciding official must then determine whether the sustained charges warrant the action proposed. The deciding official has the authority to:

(1) Withdraw the proposed action.

(2) Reduce the proposed penalty, but may not impose a more severe action than that proposed.

(3) Effect the proposed action.

(4) Propose or implement an abeyance, last chance, or other form of agreement.

4. UNION REPRESENTATION. Employees are entitled to Union representation during investigations under the provisions of Weingarten rights. The Union has a right to be present at a meeting related to disciplinary and adverse actions, which meets the definition of a formal discussion, and, upon the Employee s request, at the presentation of any oral reply to take notes.

5. CONFIDENTIALITY. Disciplinary and adverse actions are matters of personal privacy and will be accomplished confidentially. Interviews and inquiries will be conducted privately and in such a manner as to minimize personal embarrassment of Employees. The number of persons involved in a particular action will be decided on each individuals need-to-know. Information relating to such actions will only be released to individuals with a legitimate need-to- know or upon the signed authorization of the Employee.

6. PRELIMINARY INVESTIGATION. Prior to taking a disciplinary action or issuing a proposed notice of adverse action, the Employer may undertake any fact-finding discussions and/or investigations deemed necessary to understand fully the facts of the situation. An Employee who is examined in the course of such fact-finding has a right to be represented by the Union if the conditions prescribed under Weingarten are met or the meeting qualifies as a formal discussion. If the Employee requests representation, then the examination will not begin or continue until a Union representative has been given a reasonable opportunity to be present.

7. REPLIES. The periods of time for reply or decision indicated in the procedures above may be extended by mutual agreement of the Parties. Each request for an extension will be considered on a case-by-case basis. If the Employee makes an oral reply, then the Employer will prepare a summary of the oral reply (5 USC 7503/7513) and will provide a copy to the Employee and/or the Union representative upon request. If requested by the Employee, then a local Union representative may be present during an oral reply for the purpose of taking notes.

8. LIST. The Employer will provide the Union with an annual summary of disciplinary and adverse actions of Employees. This list shall include the position held, Section Bargaining Unit status, proposed charge, and final decision/action.

ARTICLE 24

ALTERNATIVE DISCIPLINE PILOT PROGRAM

1. As an alternative to traditional employee discipline, when determined appropriate by the Employer, the Employer will offer alternative discipline, as described below, in lieu of suspensions without pay of up to fourteen (14) days. The decision to use alternative discipline will be based on the individual case, and will be determined by the benefits to be gained and shared by both Parties constructive correction, more effective use of resources, and savings of time and money.

2. The alternative form of discipline used for this pilot program will be paper suspensions, specifically, a written document in the form of an agreement, in lieu of a suspension (placing an Employee in a nonpay, nonduty status). The written agreement will carry the same weight as a suspension and will be taken in accordance with progressive discipline. For purposes of this pilot program, agreements in lieu of suspensions will be used only for leave- or attendance-related misconduct that would normally warrant a suspension of less than fourteen (14) days. It will not be used where removal is the appropriate penalty or when there are multiple charges, one or more of which includes an attendance-related charge.

3. Procedures

   a. At the time of the misconduct, the Employer and the Employee Relations Specialist and/or LRO, Employee, and a Union representative (if Employee requests) will meet and discuss the misconduct. At a minimum, the discussion will cover:

      (1) The misconduct;

      (2) Why it was a problem and why it cannot continue;

      (3) Employee s responsibility to correct behavior;

      (4) The benefit of entering into an agreement in lieu of traditional discipline;

      (5) The impact of the agreement (carries the same weight as traditional suspension in terms of progressive discipline); and

(6) The need for the Employee s agreement to accept alternative discipline in lieu of traditional discipline (and waives grievance/appeal rights in order for alternative discipline to be effected).

b. If an Employee decides to accept an offer of alternative discipline, a draft agreement will be provided during the meeting. The Employee will be given sufficient time to review the document and ask questions before signing it. The agreement will include, at a minimum, the following:

(1) A description of the offense and its seriousness;

(2) The Employee s acknowledgment of the misconduct and admission of wrongdoing;

(3) Identification of the traditional disciplinary action replaced;

(4) A statement that the traditional penalty was warranted;

(5) A statement that the traditional penalty will be cited in future actions and will be relied upon to impose a more severe penalty if further misconduct takes place;

(6) The Employee s waiver of grievance/arbitration/appeal rights as a condition of selecting the alternative discipline in lieu of traditional discipline;

(7) A commitment by the Employee to improve his/her conduct and to avoid future instances of misconduct;

(8) A notice of possible penalty for subsequent offense;

(9) A statement that Employee voluntarily agreed to the paper suspension in lieu of traditional suspension;

(10) Requirement to participate in drug and/or alcohol or other type of Employee assistance program, if appropriate;

(11) A statement that the agreement does not preclude the agency from taking appropriate action regarding any other misconduct not covered by the agreement; and

(12) The signatures blocks for Employee, his/her supervisor, and Employee Relations Specialist, and/or Labor Relations Officer. If Union representation occurs, the Union official requested is allowed to initial the Agreement at the Employee s signature.

c. The Employee will be given the opportunity to accept alternative discipline prior to a notice of proposed suspension being issued. The Employee will be offered the choice of accepting the suspension or remaining on the job and accepting a paper suspension. The Employee s participation in this program is completely voluntary, and the Employer s offer is discretionary.

d. The original agreement will be filed on the left side of the OPF and retained for a period of four (4) years from the date of the Employee s signature or until the Employee leaves the USGS, whichever take place first, and a copy of the agreement will be maintained in the Employer s files. The Employee will be provided two copies of the agreement in accordance with Article 24. The additional copy may be provided to the Employee s Union representative at the Employee s discretion.

e. If the Employee declines the alternative discipline, then the disciplinary action will be processed in the traditional manner and in accordance with applicable laws, rules, regulations, procedures, and the provisions of this Agreement.

4. Duration of Pilot Program. This pilot program will remain in effect for a period of eighteen (18) months or until such time as the Employer deems its use ineffective in improving Employees conduct. The Employer will determine at the expiration of the pilot whether it has been a successful alternative to traditional discipline for and improvement of attendance-related misconduct. As a result of this determination, the Employer may make the program permanent and may also expand its coverage to include other types of offenses and misconduct.

FORMAT FOR

VOLUNTARY ALTERNATIVE DISCIPLINE AGREEMENT

IN LIEU OF SUSPENSION

1. I, _____ , voluntarily elect to accept corrective disciplinary action from management for the misconduct/wrongdoing specified below, in the form of this Agreement.

2. Description of Offense.

3. By accepting this Agreement, I willingly admit to the misconduct/wrongdoing described above. I fully understand and realize that management would have proposed a ___-day suspension without pay if I had not voluntarily entered into this Agreement.

   I further agree that this action is considered my ___ offense under progressive discipline. I am committed to improving my future conduct. I understand management will deal more harshly with any further misconduct/wrongdoing in accordance with progressive discipline.

   I understand that this Agreement will remain in the Employer s files and my Official Personnel Folder for a period of four (4) years or until I leave the employ of the USGS, and may be relied upon to support future disciplinary actions.

   I understand my election to participate in this pilot program as stated above is voluntary and fully agree with the terms of this Agreement. I know and understand that if I had not participated in this program and had been suspended without pay, that I would have had appeal/grievance rights with respect to the charge and penalty discussed above. I understand that my election to participate in this program waives my right to appeal or grieve through these procedures.

   I understand this Agreement does not preclude management from taking appropriate action regarding any other misconduct by me that is not covered by this Agreement.

   I am committed to improving my future conduct as follows:

   (List of specific actions the Employee intends to take to improve attendance related misconduct and resolve the Employer s issues regarding the misconduct, e.g.,)

   I will get another alarm clock and set it in an area so that I will have to physically get out of bed

and walk to turn it off.

I will call my supervisor or the designated alternate as early as possible to request leave.

I will build up my leave to more than 40 hours.

I will comply with all requirements for securing proper supervisory approval for leave.

I will make alternative arrangements for child care.

_____ _____

Employee s Signature Date

_____ _____

Supervisor s Signature Date

_____ _____

Employee Relation s Specialist and/or LRO s Signature Date

ARTICLE 25

REWARDS AND RECOGNITION PROGRAM

1. The Employer and the Union agree that substantial benefits will result from energetic sponsorship and maintenance of an awards program. The Rewards and Recognition Program is designed to encourage all employees to share actively in improving Government operations, enhancing productivity and creativity, and achieving personal job satisfaction through providing timely recognition to those whose job performance and adopted ideas benefit the Government and are substantially above normal job requirements.

2. The Program shall be administered in accordance with appropriate laws, rules, regulations, and agency guidance and the provisions of this Agreement. The Employer will provide the Union with a copy of the current Bureau guidance.

3. The Employer will provide to the Union an annual list of rewards presented to MIT employees that will include organizational subdivision, series, grade, and type of award.

4. The Rewards and Recognition Program allows for the acknowledgment of contributions that lead to achievement of organizational, group, or individual results through the use of monetary awards, nonmonetary recognition, and honor awards.

    a. Monetary awards are cash awards [e.g., Special Thanks for Achieving Results (STAR), Quality Step Increases, Continuous Improvement Incentives] that may be granted to recognize an individual or group for achieving organizational results; providing quality customer service; displaying exemplary behavior, dedication, innovation, and/or team cooperation; fostering partnerships; promoting diversity; ensuring safety in the work place; or sustaining exceptional performance.

    b. Nonmonetary recognition and informal honors (e.g., time-off recognition, nonmonetary recognition of nominal and significant value, informal honors, Length-of-Service recognition) may be granted to employees to recognize superior accomplishment of regularly assigned duties, exceptional achievement of project goals, noteworthy accomplishments over a sustained period, or specific contributions in accordance with the organization s mission.

    c. Honor Awards (e.g., Distinguished Service, Meritorious Service, Unit Award for Excellence of

Service, Superior Service, Heroic Act Honors) are the most prestigious type of recognition that may be granted for career accomplishments, exceptional support of the Department/Bureau mission, or heroism.

ARTICLE 26

LEAVE

1. POLICY. Employees have the right to use leave and the Employer has the right to approve when it will be used. Denial of leave will not be used as discipline. Leave will be scheduled, requested, approved, and used in a fair and equitable manner and in accordance with applicable laws, regulations, and the provisions of this Agreement. Leave may be requested and used in fifteen (15)-minute increments. Personal reasons for requesting leave will be disclosed on a need-to-know basis.

   a. Requesting Leave. Except in emergency situations and unforeseeable circumstances, Employees must request and obtain approval to use leave prior to the day leave begins. Employees are encouraged to submit leave requests [annual, sick leave for planned medical treatment, and leave without pay (LWOP)] as far in advance as possible and to use a Form SF-71, Application for Leave, when requesting leave for more than (1) one day.

   b. Emergency Requests for Leave. When an Employee is unable to report to work because of an emergency or illness, he/she will notify the appropriate leave approving official within two (2) hours after the beginning of core time, unless prevented from doing so by circumstances beyond the control of the Employee. Employees are encouraged to make such requests prior to the beginning of core time when possible to assist the supervisor in making alternative plans for work assignments.

      If the approving official is unavailable, then messages left on phone mail must include a phone number where the Employee can be reached. The request will be acted on by the Employer within two (2) hours. The Employee must be available for the return call. Approval of emergency leave requests will be granted only when conditions warrant.

   c. Requests for Unscheduled Annual Leave, Leave Without Pay, Credit Hours, or Compensatory Time Off. When an Employee calls in for approval of an unscheduled absence from work not owing to an emergency or illness, he/she will do so at the earliest possible time and should normally call the appropriate leave-approving official prior to the beginning of core hours. If the official is unavailable, the Employee should leave a message on his/her phone mail with a telephone number where the Employee can be reached. The Employee should then call the second-level supervisor to request the leave and, if unavailable, leave a similar message. The Employer will normally act on such requests within two (2) hours after core time begins. The

Employee must be available for the return call. If no call is received by the Employee within two (2) hours, then the leave will be considered approved.

2. ANNUAL LEAVE. It is agreed that the use of accrued annual leave is a right and not a privilege, subject to management approval of its scheduling. Consistent with the needs of the Employee and the Employer, annual leave that is requested in advance will normally be approved.

   a. When making advance requests for annual leave, it is not necessary for the Employee to provide a reason for the request.

   b. In the event that annual leave is denied or previous approval withdrawn, the Employee's supervisor will make every reasonable effort to reschedule the leave at times desired by the Employee.

   c. Previous approval of annual leave will not normally be withdrawn except in the case where the Employer has determined the Employee s services are required or where the Employee has failed to meet known commitments.

   d. Denial of annual leave requests submitted in writing and withdrawal of previous approval of annual leave will be provided to the Employee in writing.

   e. If work requirements prevent similarly qualified Employees within the same workgroup from being absent simultaneously, then conflicts among Employees will be resolved through seniority based on each Employee s Service Computation Date (SCD). This procedure should not be used to allow the senior Employee to have the same time period two (2) years in succession when a similar conflict exists for the same time period, such as Thanksgiving, Christmas, or New Year's Day.

   f. Consistent with the work requirements of Union officials, they may be granted up to forty (40) hours of annual leave, credit hours, compensatory time off, or a combination of the three per calendar year to attend Union conventions, training, and conferences. LWOP will not be granted for this purpose.

3. SICK LEAVE. Sick leave will be requested and approved in accordance with applicable laws, regulations, and the provisions of this Agreement. Nonemergency sick leave can be denied if the Employee's services are needed.

a. Use of sick leave is appropriate for medical, dental, mental health, or optical examination or treatment, incapacitation for the performance of duties by illness, injury, pregnancy, or confinement; or for the care of and attendance to a family member.

b. Under the Federal Employees Family Friendly Leave Act, full-time Employees may use up to forty (40) hours of sick leave each year to care for a family member as a result of physical or mental illness; injury; pregnancy; childbirth; or medical, dental, or optical examination or treatment, as well as to make arrangements necessitated by the death of a family member or to attend the funeral of a family member, including such things as travel, attending memorial services, pre-funeral gatherings/ceremonies, or reading of a will.

Sick leave for family care is appropriate for any condition that, if the Employee had such condition, would justify the use of sick leave; it is an entitlement and cannot be denied.

(1) In addition, full-time Employees who maintain a balance of at least 80 hours of sick leave can use an additional 64 hours of sick leave per year for these purposes, bringing the total amount of sick leave available for family care and bereavement purposes to a maximum of one hundred four (104) hours per year. The minimum balance must exist after deducting the amount that will be used for family care or bereavement.

There is no requirement regarding the Employee's sick leave balance for use of the forty (40) hours of sick leave and that forty (40) hours may be advanced. However, no sick leave may be advanced for the purpose of meeting the requirement to retain a minimum sick leave balance of eighty (80) hours or for using additional sick leave for these purposes when such use would otherwise cause the Employee's sick leave balance to fall below the minimum required.

(2) Part-time Employees or Employees with an uncommon tour of duty may use up to the average number of hours of work in the Employee's scheduled tour of duty each week. Part-time Employees or Employees with an uncommon tour of duty who maintain a sick leave balance equal to at least twice the average number of hours of work in the Employee's scheduled tour of duty each week may use an amount equal to the number of hours of sick leave normally accrued by the Employee during a leave year.

c. Employees may use sick leave for absences relating to adopting a child. An adoptive parent may use sick leave for appointments with adoption agencies, social workers, and attorneys; court

proceedings; required travel; and other activities necessary to allow the adoption to proceed.

Leave for this purpose must be requested in advance, to the extent possible. There is no limitation on the amount of sick leave that may be used for adoption and a maximum of thirty (30) days of sick leave may be advanced.

4. MATERNITY/PATERNITY LEAVE. Employees may use any combination of leave, LWOP, and donated leave available to them in accordance with applicable laws, rules, and regulations for the birth or adoption of a child. The length of absence for maternity reasons will be determined on a case-by-case basis, taking into consideration Employee wishes and workload requirements. Parents returning from leave after birth or adoption may request and be considered for part-time or job-sharing work assignments.

5. LEAVE WITHOUT PAY. The granting of LWOP is an administrative determination and cannot be demanded by Employees as a matter of right. Requests for LWOP will be duly considered by the Employer in accordance with applicable laws, regulations, and the provisions of this Agreement. The Employer's practice is to grant LWOP only when the absence will be of mutual benefit to the Employer and the Employee. In cases where the Employee is not exercising a statutory right, the work requirements of the Employee's position will also be considered in the approval process. Requests for LWOP for fourteen (14) or more work days must be made in writing and must include the reason for the request.

   a. Circumstances Appropriate for LWOP.

      (1) Educational purposes,

      (2) Service with non-Federal public or quasi-public organizations, and

      (3) Pregnancy/Paternity Leave.

   b. Statutory Right to LWOP.

      (1) Family and Medical Leave Act (FMLA). Eligible Employees are entitled to a total of twelve (12) administrative workweeks of unpaid leave during any twelve (12)-month period for the birth of a son or daughter and care of the newborn; the placement of a son or daughter with

the Employee for adoption or foster care; the care of a spouse, son, daughter, or parent with a serious health condition; and a serious health condition of the Employee that makes him/her unable to perform the duties of his/her position. To be eligible, an Employee must have worked for the Federal Government for at least twelve (12) months (all time worked is counted; it does not have to be continuous or consecutive). For temporary or intermittent Employees, he/she must have worked at least one thousand two hundred fifty (1,250) hours (paid leave and unpaid leave, including FMLA leave, are not included) during the twelve (12) months prior to the start of the FMLA leave.

(2) The Employee is a disabled veteran undergoing medical treatment.

(3) The Employee is a reservist undergoing military training.

(4) The Employee has a claim approved by the Office of Worker's Compensation, and the Employer determines the Employee will be retained on the rolls during the absence.

c. Union Officials. LWOP may be requested and approved for up to one (1) year for an Employee who wishes to serve as a temporary officer or representative of NFFE.

d. Impact. Excessive use of LWOP affects the Employee's benefits such as WGI waiting period, tenure, leave, and health benefits. Employees should monitor their use and seek the advice of a benefits specialist in the servicing personnel office if they have questions or concerns.

6. ADMINISTRATIVE LEAVE. At the discretion of the Employer, administrative leave may be granted to Employees for participation in such civic activities as civil defense drills, registering to vote, and voting in national, State, and municipal elections, and for such other reasons deemed necessary by the Employer or required by law or regulations. Approval of requests for such leave will be made in accordance with applicable laws, regulations, and the provisions of this Agreement.

a. Blood Donation Program. The Parties fully support the Blood Donation Program, and to encourage participation, the Employer will generally allow Employees who donate blood to take up to four (4) hours of administrative leave, subject to workload requirements and under the following guidelines:

(1) Employees must notify the appropriate individual to schedule an appointment in order to be granted any administrative leave.

(2) Credit hours may not be earned on a day administrative leave is taken.

(3) The four (4)-hour maximum includes the amount of time it takes for actual donation.

(4) Employees must record on sign-in/sign-out sheets the time they leave to donate blood.

(5) The leave must be taken on the day blood is donated.

b. Employees are entitled to use up to seven (7) days of paid leave in a calendar year (in addition to sick or annual leave) to serve as a bone-marrow or organ donor. This is a statutory right of an Employee and cannot be denied by the Employer.

7. ADVANCED LEAVE. The Employer will grant advanced sick or annual leave at its discretion. The maximum amount of sick leave that can be advanced is two hundred and forty (240) hours and the annual leave advance may not exceed the amount of annual leave to be accrued by the end of the current leave year. Employees on limited appointments may be advanced only the sick or annual leave that will be earned in the remaining period of the appointment. Employees will not be granted advanced leave in cases where there is no likelihood that the Employee will return to work.

8. COURT LEAVE.

a. Jury Service

(1) It is the Employer's policy that as a general rule, requests will not be made to excuse Employees from jury duty.

(2) Court leave is granted for jury service to full- and part-time Employees who are in a pay status. Annual leave, including leave that would otherwise be forfeited, may not be substituted for court leave.

(3) The period of jury duty from the date stated in the court summons to the date of discharge by the court is charged as court leave.

(4) An Employee excused from jury duty for an entire day or for a period that would permit the Employee to work for at least four (4) hours is expected to return to work unless the return

would cause a hardship because of the distance of the court from the residence or place of duty, or unless the Employee is assigned to night duty. If Employees do not return to work when excused from jury duty, except for the above reasons, then annual leave will be charged for the absence from work.

b. Witness Service.

(1) Official Duty. Employees are considered to be in an official duty status if they are summoned to:

(a) Testify in an official or nonofficial capacity or produce official records on behalf of the United States Government or the District of Columbia.

(b) Testify in an official capacity or produce official records on behalf of a party other than the United States or the District of Columbia.

(2) Court Leave. An Employee is granted court leave when summoned to serve as a witness in a judicial proceeding in a nonofficial capacity on behalf of a State or local government or on behalf of a private party when the United States, the District of Columbia, or a State or local government is a party. Court leave is not available when the service in a nonofficial capacity is on behalf of a private party except as indicated above. When court leave is not authorized, the period of witness service is charged as annual leave or leave without pay.

9. Absence Without Leave (AWOL). Absence without Leave (AWOL) is absence from duty that is not authorized or approved, including leave which is not approved until required documentation is submitted or for which a leave request has been denied. AWOL, in itself, is not a disciplinary action, but continued use of AWOL can be the basis for disciplinary action up to and including removal from the Government. AWOL is charged in one (1)-minute increments.

10. RESTORED LEAVE. Annual leave that is subject to forfeiture at the end of the leave year may be restored by the Employer in accordance with Bureau policy.

11. VOLUNTARY LEAVE TRANSFER PROGRAM. The Parties fully support the appropriate use of the USGS Voluntary Leave Transfer Program. Bureau requirements will be followed for the request, approval, solicitation, and use of transferred leave.

12. MILITARY LEAVE. The Employer agrees to grant military leave to the fullest extent allowable. Employees who are members of a reserve component of the Armed Forces or members of the National Guard are entitled to use accrued military leave upon presentation of competent orders. Full-time employees will accrue military leave at a rate of fifteen (15) days on a fiscal-year basis, and part-time employees will accrue military leave at a prorated rate that is determined by dividing forty (40) into the number of hours in the regular scheduled workweek of that individual during that fiscal year. On October 1 of each fiscal year or upon first appointment in the fiscal year, the unused military leave remaining in the Employee s account from the prior fiscal year [not to exceed fifteen (15) days] plus the military leave to which the Employee is entitled for the current fiscal year is credited to the Employee s account. This gives full-time Employees the potential for thirty (30) days of military leave during a fiscal year.

    If the Employee has exhausted military leave and is called for duty, then any additional period of military service is charged to annual leave or leave without pay. Annual leave may not be substituted for available military leave.

13. DISCRETIONARY APPROVAL OF ABSENCE. The Employer has the authority to and may excuse absences of up to one (1) hour for infrequent absences and tardiness. The Employer's exercise of this authority will be based on the merits of each case and will be applied in a fair and equitable manner. Employees may not grieve or appeal a decision by the Employer not to excuse a particular absence or incident of tardiness.

14. LEAVE ABUSE. The Parties agree that abuse of leave by an Employee is a serious matter and may have an adverse impact on coworkers by resulting in the requirement for them to perform the duties of the absent Employee. The Employer, through its supervisory personnel, will monitor the leave usage of Employees in such a way as to identify abuse as early as is possible.

    a. The Employer will normally provide a verbal warning when there are concerns regarding leave use by an Employee prior to imposing a leave restriction on the Employee. The decision whether to impose a leave restriction without a verbal warning will be made on a case-by-case basis.

    b. If the leave use does not improve after a verbal warning, then the Employer may place the Employee on leave restriction for a period of six (6) months. The period of leave restriction may be extended for a year, in six (6)-month increments, if adequate improvement in leave use has not been achieved by the Employee. Notification of leave restriction will be in writing and will include:

(1) The reasons for imposing the leave restriction,

(2) Any specific requirements for requesting the approval of leave for non-medical reasons,

(3) Any requirement for providing medical certification for subsequent absences when the Employee claims they are for medical reasons, and

(4) The timeframe for the leave restriction.

c. Consistent with governmentwide regulations, the Employer may require medical documentation for absences of three (3) work days or less when there is evidence that abuse of leave may have occurred regardless of whether the Employee is on leave restriction.

ARTICLE 27

POSITION DESCRIPTION AND CLASSIFICATION

1. POSITION DESCRIPTIONS

   a. Each Employee will be provided a copy of a position description recording the major duties and responsibilities of his/her position. Each Employee is entitled to a complete and accurate position description.

   b. The phrase other duties as assigned shall not be used to assign work regularly to an Employee when that work is not reasonably related to his/her position description. Work assignments shall normally reflect the grade level, classification, and performance required of an Employee. Higher level duties and responsibilities, as documented in an established position description, may not be assigned to an Employee on a continuing basis if not assigned in accordance with merit principles.

   c. Any Employee who feels that he/she is performing duties outside the scope of his/her position description or that his/her position description is inaccurately described or classified may request, through the immediate supervisor, that the position description be reviewed. The Employer shall complete the review and revise the position description within forty (40) workdays if deemed necessary. If the Employer determines the requested change(s) are unwarranted, then the Employee may seek a review by the appropriate Chief Scientist. The Chief Scientist will be the final authority on the decision of whether or not to request a classification review of the position description.

   d. The Parties recognize that, in accordance with 5 U.S.C. 7121(c)(5), classification of position is not grievable unless the action results in a reduction in grade or pay for the Employee.

   e. An Employee will be notified whenever his/her position is to be audited. Such notification shall include the Employee's right to seek the advice of a Union representative prior to the audit. As part of the audit process, the Employee may make a written presentation to the classifier concerning the duties and responsibilities of his/her position.

2. CLASSIFICATION. Employees are free to appeal the grade and/or classification of their positions at any time without fear of reprisal or prejudice. General Schedule Employees may appeal in

accordance with provisions of SM 370.511.6. A General Schedule Employee may also appeal to OPM at any time.

ARTICLE 28

PERSONNEL RECORDS/EMPLOYEE RECORDS

1. The OPF is the official repository for required records affecting an Employee s status and Federal employment. The OPF provides the basic source of factual data about the Employee s Federal employment history and is used primarily by the USGS Office of Personnel in determining qualifications, employment status, computing length of service, and providing information needed in providing personnel services.

2. Material will be filed in the OPF in compliance with applicable rules and regulations. The Employer will assure that OPF s are maintained in accordance with applicable Privacy Act requirements.

3. Under the following conditions, each Employee and/or his/her personally designated representative will, upon request, be provided access to examine any documents contained in the Employee s OPF, except for any records restricted by law and/or regulation, and may request reasonable copies of the documents.

    a. The Employee provides written authorization for the representative to be granted access to the records. Such authorization must state the specific records concerned or provide authorization for the representative to view any and all records maintained and releasable.

    b. The Employee and/or the representative must schedule an appointed time to view the records.

    c. The records will be reviewed in the general presence of those having custody of the files.

    d. Under no circumstances may the Employee or the representative personally add to or remove from the contents of the file(s) being reviewed.

4. If an Employee believes incorrect material is contained in the OPF, then he/she may prepare a written rebuttal that will be attached to the left side of the OPF and maintained for the same length of time as the document it rebuts. Upon receipt of the written rebuttal, information determined to be incorrect by an appropriate official will be removed or corrected within a reasonable timeframe.

5. Employees may submit the original or official and untampered copies of documents they believe to be missing from their OPF. However, the Employer retains the final authority to determine if the filing of

such documents in the OPF is appropriate and/or lawful.

6. Copies of all unfavorable material, such as letters of reprimand, suspension, etc., will be provided to the Employee before being placed in the OPF. Employees shall be advised of the length of time the Employer intends to maintain unfavorable material in the OPF. Normally, this information will be provided to the Employee through the decision letter and/or Form SF-50, Notification of Personnel Action, affecting the action. Any Employee who receives written material described above will be required to acknowledge receipt by signing the receipt copy of the document. If the Employee refuses to sign, the supervisor will note the date... or annotate the written material with the date on which it was provided... the date on which the material was provided to the Employee and indicate the Employee s refusal to sign.

7. Authorized personnel who are not employed by the Bureau may inspect an Employee s OPF only after producing appropriate credentials.

8. Records maintained by the Employer that are not in the OPF and that contain personal information about Employees (such as time and attendance records, performance evaluations, records of disciplinary discussions, and similar material) will be adequately secured to prevent inappropriate disclosure. The Employer will maintain such records in accordance with applicable Privacy Act requirements and records disposition guidance.

9. The Parties recognize that notes of a performance- or conduct-related nature may be maintained within supervisory files. This includes records of any disciplinary or performance discussions between the Employer and the Employee. The Employer may keep these records for up to one (1) year, whereupon they must be destroyed, unless there is a disciplinary or performance-based action already in progress or appeal/grievance of such action, when the appeals/grievance/actions are related to information contained within the records. Records of any formal performance or disciplinary action(s) taken must be maintained in accordance with the Bureau s records retention schedule.

ARTICLE 29

CONTRACTING OUT

1. POLICY. It shall be the policy of the Employer to inform the Union of any contracting-out review of a function that could affect the Bargaining Unit. The Employer agrees to comply with all provisions of Federal Acquisition Regulation 48 C.F.R. Section 7.3 et seq., Office of Management and Budget (OMB) Circular A-76, this Agreement, and other applicable laws, rules, and regulations concerning contracting out.

2. INFORMATION. The Union President or his/her designee will be notified of any scheduled A-76 study that affects Employees, and will receive add-ons and deletions as they take place. Employees and the Union are encouraged to provide suggestions and recommendations to the Employer to identify the most efficient in-house operation and to develop a competitive in-house bid.

3. PERFORMANCE WORK STATEMENT. The Union will be provided the opportunity for input into the Performance Work Statement simultaneously with the submission for Invitations to Bid or Requests for Proposals for contractual services.

4. BID OPENING. The Union will be given an opportunity to attend any bid opening that may affect Employees.

5. REVIEWS. After review of the outside contractor bids and a decision to contract out has been made, the Union will be provided appropriate data to the extent not prohibited by law. The Union will be provided a copy of the most efficient operation (in-house bid) and the low-bid figure from the outside contractor.

6. PERSONNEL AFFECTED BY CONTRACTING OUT. When a function is contracted out, the Employer agrees to reduce the impact on Employees to the fullest extent possible. To the extent possible, consideration will be given to placement of affected Employees through reassignments or retraining.

7. GRIEVANCES. When a function is contracted out, the Union or Employees may pursue grievances as appropriate under the negotiated grievance procedure in this Agreement.

8. UNION REPRESENTATION. The Employer will afford the Union the opportunity to appoint a

representative to attend those meetings with third-party organizations to discuss/explore avenues for contracting out additional activities that would affect Employees. The Employer will provide the Union representative with copies of correspondence announcing such meetings and that which is provided to other attendees.

9. TRAINING MATERIALS. The Employer will promptly provide to the Union all training materials that the Bureau has (if any) on preparation of a commercial activity review. These materials may include written and video training materials on the preparation of a commercial activity review, including the performance work statement, the most efficient organization, the cost comparison, and the administrative appeal procedure. The Union shall be included in any training sessions that the Bureau conducts on preparation of a commercial activity review.

ARTICLE 30

NOTICES TO EMPLOYEES

1. The Union recognizes the Employer s right to notify a specific Employee directly of its intent to take a specific action with regard to that Employee. Such cases include but are not limited to RIF, adverse action, reassignment, transfer of function, furlough, detail, discipline, denial of WGI, and any actions based on unacceptable performance.

2. The Employer recognizes the representational concerns of the Union regarding these types of notices. Therefore, the Employer agrees to provide a second copy of any such notice that states at the top of the first page This copy may be provided to any officer of NFFE 1957 if you choose to do so.

ARTICLE 31

OFFICE MOVES

1. The Parties agree that the physical movement of individual or organizational group of Employees may be necessary because of a reorganization or to promote the efficiency of operations and/or the efficient use of allocated office space.

2. The Parties agree that:

   a. The provisions of this Article will be followed when implementing office moves.

   b. Every attempt shall be made to relocate Employees into comparable or better working space and areas.

   c. Newly constructed office space will be at least sixty-four (64) square feet and, whenever possible, will be eighty (80) square feet.

   d. Employees will have storage space equal to or better than what they currently have; e.g., numbers of flipper files, lateral files, bookcases, etc., as space allows. The Employer will work with Employees to accommodate their individual storage needs.

   e. Where groups are moving or space is being reconfigured, the Employer will solicit Employee wishes when assigning individual office space within organizational units and that tiebreakers will be decided based on grade and then on seniority on the basis of the SCD.

   f. To the extent possible, supervisors will have private offices so that Employees have the opportunity for private communication.

   g. All safety requirements such as the proper number of exits from work spaces and that doors will not be improperly blocked, will be met.

   h. When a unit is not moving, the Employer will attempt to allow individual Employees to remain in their present space.

   i. If possible, Employees shall keep their same telephone numbers and telephone service(s).

Dedicated telephone lines for TDDs will be installed and working prior to moving Employees with hearing impairments. If a hearing-impaired Employee shares a telephone line with hearing Employees and that line becomes dedicated for a TDD only, then another phone shall be installed for the hearing Employees, as appropriate.

ARTICLE 32

REDUCTION IN FORCE AND FURLOUGHS OF MORE THAN 30 DAYS

The Parties agree that RIF results in disruption to the productivity of the workplace, lowers overall employee morale, and should be used as a last resort. Before deciding to implement a RIF or a furlough of more than thirty (30) days, the Employer agrees to investigate the feasibility of early-out retirement and buyout authority, attrition, freezing promotions, and other means of reducing expenditures. The Employer will normally freeze outside hires prior to and during the conduct of the RIF.

The provisions of this Article apply when the Employer makes a decision to conduct a RIF based on reorganization, transfer of function, position abolishment requiring RIF procedures, or the introduction of a technological change that results in a loss of pay for any Employee.

1. The Employer agrees to notify the Union of its decision to conduct a RIF or to use RIF procedures to furlough Employees for more than thirty (30) days as far in advance of the notification of affected Employees as possible, but no less than thirty (30) days prior to the issuance of any advance RIF notices. The notification to the Union will include at a minimum:

    a. The number of positions affected.

    b. The proposed effective date.

    c. The reason(s) for the RIF or furlough.

2. The Employer will consider the retention of career Employees as a high priority in decisions regarding potential and actual RIFs or furloughs.

3. The Employer will comply with all applicable laws, rules, regulations, and negotiated procedures when conducting a RIF or applying RIF procedures to other situations, as required.

4. The ground rules for conducting a RIF or applying RIF procedures are as follows:

    a. Advance Notice. The Employer will issue an Advance Notice of Reduction-In-Force to all Employees if the decision to conduct a RIF or a furlough of more than thirty (30) days is made at least one hundred twenty (120) days prior to the effective date of any resulting personnel actions

and enough information about the RIF is available to do so. The Advance Notice will provide Employees with all of the relevant information available at the time of the notice and will inform Employees of any known arrangements that are made or planned to assist them during the RIF process, such as the availability of the Employee Assistance Program, additional resource referrals, etc. The Union will be provided a copy of the general notice prior to its issuance to Employees.

b. Length of Notice Period. The minimum notice period for the Specific Notice to individual Employees will be sixty (60) days. The content of Specific Notices will conform to applicable law, rules, and regulations. Each Employee will be provided two copies of his/her specific RIF notice. The additional copy may be provided to the Employee s Union representative at the Employee s discretion.

c. Response Time. The response period for an Employee who receives a Specific Notice (excluding separation notices) to accept or decline the assignment offered will be ten (10) calendar days from the date the Employee receives the Specific Notice.

d. Use of Facilities and Official Time. With supervisory approval, an Employee may use a reasonable amount of official time [not to exceed a total of sixteen (16) hours], official equipment, supplies (except related to postage), and facilities to pursue employment opportunities inside or outside the USGS, such as:

(1) Preparing resumes or applications for Federal Employment.

(2) Attending seminars on retirement planning, career transition assistance, financial planning, etc.

(3) Attending job fairs and interviews or register at the local unemployment office, etc.

e. Tiebreakers. When two or more Employees are tied in retention standing and there must be an established nonsubjective method for determining which Employee receives an assignment right, length of service in the DOI will be used to break the ties.

f. Assignment Rights for Other than Permanent Employees.

(1) Term Employees are limited to first-round competition and, if released from their competitive

level, will have no bump or retreat rights and will be separated no later than the RIF effective date.

(2) The Employer, in consultation with the Union, will determine the continuing need for excepted service positions separate from the conduct of the RIF. Any positions determined to be expendable will be abolished and the Employees will have no retention rights as part of the RIF and be separated no later than the RIF effective date.

(3) Temporary Employees will be terminated no later than the RIF effective date.

(4) Reemployed annuitants will be separated no later than the RIF effective date.

g. Use of Vacancies for Assignment Rights. Vacant positions will not be used to satisfy an Employee s assignment rights as part of the RIF. However, the Employer, to the fullest extent possible, agrees to offer priority consideration to Employees who would otherwise be separated as a result of the RIF.

(1) The separated Employee must meet the minimum qualifications for the vacant position to include any special skills, or selective factors which would normally be used when advertising the position through the Merit Promotion Program.

(2) If two Employees are equally qualified, retention provisions of RIF regulations will apply.

h. Cutoff Date for Performance Appraisals and Other Discretionary Actions. The Employer will establish a date that is no more than one hundred eighty (180) days and no less than one hundred twenty (120) days from the date of specific RIF notices, after which no performance appraisals or requests for other discretionary personnel actions, such as revision of position description, promotion, reassignment, etc., will be accepted. This cutoff date will be applied across the board without exception, which will ensure that all Employees are treated equally.

i. Employee Review of Record. Once it has been announced that RIF procedures will be used, Employees will have two (2) weeks [fourteen (14) calendar days] within which to review and update their personnel records such as their qualification statement, Application for Federal Employment, Form SF-171, records of training, awards, etc., by providing copies to the servicing personnel office of new or updated materials. Employees may have up to two (2) hours of official time for this purpose but must obtain supervisory approval for the specific time(s) that they will be

away from their work site. The Employer will provide assistance to Employees adversely affected by a RIF or furlough to the fullest extent allowable by law and within available resources to include retraining programs, job fairs, and coordination with other Federal agencies to obtain maximum consideration for employment opportunities and will arrange for classes on such topics as resume preparation, retirement planning and decisionmaking, financial planning, understanding RIF rights, severance pay calculations, reemployment, and career-transition programs.

j. Training. The Employer agrees that when an Employee is placed in a position as a result of the exercise of his/her bump rights, adequate training will be provided during the first ninety (90) days to afford the Employee a full and fair opportunity to perform the duties of the new position. Employees who retreat into a new position will be provided training as needed to upgrade technical skills; e.g., changes in computer programs and applications.

ARTICLE 33

FURLOUGH OF LESS THAN 30 DAYS

The Parties recognize that there are many factors that may lead to the necessity to furlough Employees. The Parties further recognize that furlough may be initiated by management owing to these factors or the result of an emergency or Government shutdown.

1. GENERAL.

Regardless of the length of the furlough or its cause, the Parties agree to the following:

a. Employees will not be discouraged from communicating their personal opinions with the media, Congress, or private citizens regarding the furloughs as long as such communications are not in violation of appropriate laws or regulations regarding security, ethics, and employee standards of conduct.

b. Employees may submit the necessary forms to change or cancel existing allotments of pay at any time prior to or during the furlough. Processing of the requested changes will be effected to the extent allowable under the conditions of the furlough; e.g., payroll office personnel exemption from a Government shutdown.

c. Employees may request cancellation of their existing Combined Federal Campaign (CFC) contributions by completing the appropriate form and forwarding to the payroll office for processing. Processing will be effected in the pay period in which received to the fullest extent possible. Employees may reenroll under applicable regulations.

d. If an Employee properly schedules use or lose annual leave before the start of the third biweekly pay period prior to the end of the leave year but is unable to use some of or all of the scheduled leave because of a furlough or shutdown, then the leave will be restored to the Employee to the fullest extent allowed by law and regulation. Restoration of leave requests requires the approval of the appropriate management official.

e. During periods of furloughs, affected Employees will continue to receive leave, health benefits, and retirement credit in accordance with applicable laws and regulations. The Employer will continue to provide the full Employer contributions to health benefits under the Federal Employees

Health Benefits Programs for Employees affected by the furloughs as allowed by laws and regulations.

f. Employees will be allowed to seek outside employment to the fullest extent allowable under the applicable laws, rules, and regulations. Employees should contact the Bureau ethics office if they have questions concerning outside employment restrictions. Once the furlough is announced, Employees will be allowed to use Government-owned computers and typewriters to prepare resumes and to complete employment applications and associated forms on their own time.

g. Union officers will not be denied access to the Union office during furlough or shutdown. The Union President or his/her designee will provide a list of officers who will require access prior to the furlough or shutdown if officers have changed since the last list provided to the Employer.

h. When the use of official time by a NFFE representative is based on a percentage of the Employee s work schedule, the number of official hours available will not be reduced as a result of absent time owing to furlough.

i. Performance evaluations will not be negatively affected because of time lost from work owing to any furloughs or shutdowns took place during the evaluation period.

j. Unless necessitated by RIF, reorganization, or Congressional action, Employees will return from the furlough to the same tour of duty, duty location, and work schedule.

k. The Employer will work with Employees on a case-by-case basis to develop a repayment plan when the repayment of health or life insurance premiums following a furlough presents a financial hardship on the Employee.

l. The Employer will approve overtime, compensatory time, and credit hours as necessary and within budget constraints to reduce work backlogs after a period of furlough or Government shutdown.

m. When Congress passes legislation or the President signs an Executive Order allowing retroactive pay for furloughed Employees, the Employer will pay Employees the fullest amount allowable in accordance with the legislation, Executive Order, and applicable governmentwide laws and regulations already in existence. The Employer will make every effort to expedite retroactive pay.

2. MANAGEMENT-INITIATED FURLOUGH.

The Employer agrees to:

a. Consider the feasibility of taking alternative actions, such as an external hiring freeze, moratorium on promotions, cancellation or restriction of travel, training, overtime, work, etc., to avoid or limit the scope of a furlough.

b. Inform the Union in advance of any proposed furlough initiated by management and will provide as much advance notice as is possible in the event of a furlough resulting from a Government shutdown.

(1) Notify Employees selected for management-initiated furlough of less than thirty (30) days in accordance with legal and regulatory requirements and to include the reason for their selections in the written notice.

(2) Ask for and use volunteers for management-initiated furloughs of less than thirty (30) days to the fullest extent possible.

(3) Follow the regulatory requirements and the provisions of this Agreement for selection and notification of Employees for management-initiated furloughs of more than thirty (30) days duration.

(4) Allow Employees access to budget and credit counseling. To the fullest extent possible, the counseling will be scheduled during work hours, and Employee attendance will not be charged to leave. Access will consist of announced briefings on related topics, as well as referrals to the Employee Assistance Program (EAP). The vendor of such counseling will be required to maintain confidentiality.

(5) Afford Employees the opportunity to schedule their furlough days to the fullest extent possible. Scheduling will be based on the total number of hours required on furlough and is subject to supervisory approval. Supervisory approval will be based solely on office coverage and work requirements, such as security, safety, and interface with other Employees. Every attempt will be made to accommodate the schedule chosen by the Employee.

3. GOVERNMENT SHUTDOWN.

In the event of a Government shutdown, the Parties agree to the following:

a. The Employer will use a telephone hotline for keeping the Employees up to date on the status of the furlough. A separate hotline will provide a TTY message, which is the same as the voice message.

b. When Employees are in a travel status and it is determined that they are not exempted from a Government shutdown, return travel expenses will be paid by the USGS in accordance with the Federal Travel Regulations.

c. The Employer will make decisions on the number of Employees exempted on the basis of the actual amount of work required and allowed. To the fullest extent possible, management will not require exempted Employees to perform overtime work, but will reevaluate the need for additional Employees before requesting overtime work be performed.

4. NOTICES.

The Employer agrees to notify the Union in advance of Employees of its intention to initiate a furlough.

a. Employees will receive at least a thirty (30)-day notice for a furlough of less than thirty 30 days.

b. Employees will receive notice of a furlough of thirty (30) days or more in accordance with the procedures outlined in the RIF Article of the Agreement.

c. The Employer will provide the Union and the Employees with as much advance notice as possible in the event of a Government shutdown or emergency that results in furlough.

d. The Employer will provide Employees with as much information as is possible and is available to include:

(1) Impact to the Employee s pay and benefits,

(2) Unemployment compensation,

(3) EAP counseling, and

(4) Point of contact for outside employment questions.

ARTICLE 34

INFORMATION REQUESTS

1. STATUTORY REQUIREMENTS. The Employer recognizes that the obligation to bargain in good faith includes the obligation to furnish to authorized representatives of the Union, upon request and to the extent not prohibited by law, data that:

   a. Are normally maintained by the Employer in the regular course of business;

   b. Are reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

   c. Do not constitute guidance, advice, counsel, or training provided for management officials or supervisors related to collective bargaining.

2. PROCEDURES. The Parties agree that the following procedures will be used for requesting information, responding to such requests, and informally resolving disputes regarding information requests:

   a. Union Requests for Information. The Union agrees to provide requests for information using the Union Request for Information Under Section 7114(b)(4) of the Statute form. The Employer agrees to accept the request if:

      (1) All items on the form are completed. The form may be reproduced electronically and may contain only the headers (such as union contact, particularized need, etc.) to indicate the item being answered.

      (2) All other procedures in this Article are followed, as apply.

   b. Employer Response to Information Requests. The Employer will review the information request form for completeness and will:

      (1) Accept the request and respond with the Employer Response to a Union Request for Information Under Section 7114(b)(4) of the Statute form.

(a) All applicable items on the forms will be completed for all information that is not being released.

(b) All information being released will normally be provided in the official response; however, in those instances when some items are determined to be releasable and immediately available, those items will be provided prior to the completion of the official response.

(c) The Employer will release any information determined to be releasable under the Freedom of Information Act regulations as soon as it is available.

(d) The Employer will normally respond to the Union s requests for information within ten (10) workdays. However, it may be necessary to provide a partial response owing to the availability of the information requested. The Employer will include in the response the date on which the missing information will be provided.

(2) Reject the request and respond in writing within ten (10) workdays of the date of the request as to the reason the request is being rejected.

c. Joint Informal Resolution of Disputes. The Parties agree to meet within five (5) workdays after the receipt of notification from the Employer that a request for information has been rejected or a response from the Employer where all of the information requested was not provided to attempt informal resolution of the dispute.

(1) The Issue Analysis to Be Jointly Completed by the Requesting Union and the Agency form will be completed during the meeting as a means of facilitating the discussion and resolving the issues.

(2) The Parties agree to employ interest-based techniques and approach to the informal resolution meeting. The Parties further agree to rely on the guidance of the General Counsel, FLRA, regarding information requests when analyzing the issues.

(3) The Parties agree that if informal resolution is unsuccessful, the Union may file an Unfair Labor Practice charge with the FLRA. The Parties agree that the negotiated grievance procedure is not appropriate for disputes regarding information requests.

d. The Union agrees to use the procedures under this Article only to obtain information to which it

does not otherwise have access. Information available on the Internet, Intranet, or under other provisions of this Agreement will, therefore, not be requested.

ARTICLE 35

USE OF E-MAIL AND THE INTERNET

1. Network resources provided by the USGS are to be used for official purposes only. In general, Employees are expected to exercise common sense, good judgement, and propriety when using these Government resources. Employees should remember that when the network is accessed and used, the Employee is a representative of the USGS and should exhibit conduct that reflects credit on the organization. Specifically:

   a. Employees may not access the accounts and files of others without permission.

   b. Employees may not attempt to bypass restrictions, to subvert security, or to impair the functionality of the network and may not assist others in such actions. Sharing passwords is considered to be a violation of this rule.

   c. Employees may not use or distribute information improperly or illegally. This includes copyright violations and software piracy.

   d. Employees may not use the network for commercial purposes, in support of illegal activities, or for personal business. This includes the use of the network to apply for a position in the Government or the private sector, to transmit information related to the filing of a personal grievance, or to relay their personal opinions about a management action or policy to a broad internal audience or to an external audience, such as an elected official.

   e. Employees are not to use the network to distribute information about nonofficial activities, such as charitable events, religious observances, fund raisers, political events, chain letters, or other nonofficial correspondence.

   f. Electronic disseminations that reflect personal comments, internal disagreements, and/or unofficial opinions regarding USGS policies should be considered sensitive and should not be made available to any individual or organization outside the Bureau via any means without official approval. (This restriction does not apply to uses that are part of the normal open exchange of scientific information, such as communicating the preliminary results of investigations or participating in network discussions regarding scientific issues.)

2. The USGS regards e-mail messages created with Government resources to be Government property. USGS email is no less an official document as is a signed memorandum or letter, and e-mail correspondence can be subject to release under the Freedom of Information Act or any legal proceeding. Although the reading of users e-mail on a casual basis will not be condoned, there should be no expectation of complete privacy when using the USGS e-mail system. System administrators and other individuals with special system-level access are prohibited from reading the e-mail of other users unless doing so is necessary in their official capacity.

3. Browsing the Internet provides a versatile, real-time reference capability. However, Employees must avoid the temptation to spend more than a few minutes on an occasional basis surfing the net for subjects that have no direct relation to their official duties as described in the position description and/or performance plan.

    a. Although exploration of the Internet is encouraged by the DOI to build skills and to locate useful information sources, exploration should be restricted to access materials that relate to Employees official duties and to their status as a USGS, DOI, and Federal Employees.

    b. Employees are prohibited from accessing materials of a pornographic nature or theme.

4. Each Employee who uses these resources has a responsibility for making sure that their use is not abused. Misuse of these resources can carry the same sanctions as misuse of any Government resource.

U.S. Office of Personnel Management
Center for Partnership and Labor-Management Relations

GLOSSARY OF FEDERAL SECTOR LABOR-MANAGEMENT RELATIONS TERMS

August 1998

ABROGATION TEST. A test the **Federal Labor Relations Authority** applies in determining whether an arbitration award enforcing a contract provision affecting rights reserved to management is deficient. If the provision at issue is an "arrangement" for employees adversely affected by the exercise of these rights, an award enforcing such a provision will not be set aside unless it "abrogates" these rights i.e., unless it leaves management no discretion at all.

ACCRETION. When some employees are transferred to another employing entity whose employees are already represented by a union, the FLRA will often find that those employees have "accredit" to (i.e., become part of) the existing **unit** of the new employer, with the result that the transferred employees have a new **exclusive representative** along with a new employer.

ACTIONS DURING EMERGENCIES. Management's right to take whatever actions may be necessary to carry out the agency mission during emergencies doesn't come up in the negotiability disputes very often. In cases decided thus far, the FLRA has held that this right is interfered with by proposals attempting to define "emergency" because such definitions would be inconsistent with management's right to independently determine whether an emergency exists.

AGENCY HEAD REVIEW. A statutory requirement that negotiated agreements be reviewed for legal sufficiency by the head of the agency (or his/her designee). This must be accomplished within 30 days from the date the agreement is executed. If disapproved, the union can challenge those determinations by filing a **negotiability** petition or an **unfair labor practice**

charge with the FLRA. If not approved or disapproved within that time, the agreement goes into effect and the legality and enforceability of its terms is decided in other forums (e.g., grievance or unfair labor practice proceedings).

AGENCY SHOP. A requirement that all employees in the **unit** pay dues or fees to the union to defray the costs of providing representation.

AGREEMENT, NEGOTIATED. A collective bargaining agreement between the employer and the exclusive representative. A collective bargaining agreement must contain a negotiated grievance procedure.

AMENDMENT OF CERTIFICATION PETITION. That portion of the FLRA s multipurpose petition not involving a **question concerning representation** that may be filed at any time in which the petitioner asks the FLRA to ament the certification or recognition to, e.g., reflect changes in the names of the employer or the union.

AMERICAN ARBITRATION ASSOCIATION (AAA). A private nonprofit organization that, among other things, provides lists of qualified arbitrators to unions and employers.

APPLICABLE LAWS. The Authority has said that applicable laws within the meaning of title 5, United States Code, section 7106(a)(2), include statutes, the Constitution, judicial decisions, certain Presidential executive orders, and regulations having the force and effect of law i.e., regulations that (1) affect individual rights and obligations, (2) are promulgated pursuant to an explicit or implicit delegation of legislative authority by Congress, and (3) satisfy certain procedural requirements, such as those of the Administrative Procedures Act.

APPROPRIATE ARRANGEMENT. One of three exceptions to management s rights. Under title 5 United States Code, section 7106(b)(3), a proposal that interferes with management s rights can nonetheless be negotiable if the proposal constitutes an arrangement for employees adversely affected by the exercise of a management right and if the interference with the management right isn t excessive (as determined by an **excessive interference** balancing test).

APPROPRIATE UNIT (BARGAINING UNIT). A grouping of employees that a union represents or seeks to represent and that the FLRA finds appropriate for **collective bargaining** purposes.

ARBITRATION. See **ARBITRATOR**.

ARBITRATOR. An impartial third party to whom the parties to an agreement refer their disputes for resolution.

Grievance arbitration. When the arbitrator interprets and applies the terms of the collective bargaining agreement and/or, in the Federal sector, laws and regulations determining conditions of employment.

Interest arbitration. When the arbitrator resolves bargaining impasses by dictating some of the terms of the collective bargaining agreement.

ASSIGN EMPLOYEES. A management right relating to the assignment of work to employees to positions, shifts, and locations. This right includes discretion to determine the personnel requirements of the work of the position, i.e., the qualifications and skills needed to do the work, as well as such job-related individual characteristics as judgement and reliability. It also includes discretion to determine the duration of the assignment.

ASSIGN WORK. A management right relating to the assignment of work to employees or positions. The right to assign work includes discretion to determine who is to perform the work; the kind; the amount of work to be performed; the manner in which it is to be performed, as well as when it is to be performed. It also includes [t]he right to determine the particular qualifications and skills needed to perform the work and to make judgements as to whether a particular employee meets those qualifications.

AUTHORITY. See **FEDERAL LABOR RELATIONS AUTHORITY**.

AUTOMATIC RENEWAL CLAUSE. Many, perhaps most, collective bargaining agreements in the Federal sector have a provision, usually located at the end of the agreement, stating that if

neither part gives notice during the agreement s 105-60 day **open period** of its intent to reopen and renegotiate the agreement, the agreement will automatically renew itself for a period of *x* number of years.

BACK PAY. Pay awarded an employee for compensation lost due to an unjustified personnel action are governed by the requirements of the Back Pay Act, title 5, United States Code, section 5596.

BARGAINING (NEGOTIATING). A ubiquitous process--sometimes informal and spontaneous, sometimes formal and deliberate--of offer and counteroffer whereby parties to the bargaining process try to reach agreement on the terms of exchange. Formal bargaining processes with associated rituals and bargaining routines vary, depending on their political, economic, and social context.

BARGAINING AGENT. The union holding exclusive recognition for an **appropriate unit.**

BARGAINING IMPASSE (IMPASSE). When the parties have reached a deadlock in negotiations they are said to have reached an impasse. The statute provides for assistance by **Federal Mediation and Conciliation Service** mediators and the **Federal Service Impasses Panel** to help the parties settle impasses.

BARGAINING UNIT. See **APPROPRIATE UNIT.**

BINDING ARBITRATION. The law requires that collective bargaining agreements contain a negotiated grievance procedure that terminates in binding arbitration of unresolved grievances.

BUDGET. A right reserved to management. The Authority has fashioned a two-prong test that it uses to determine whether a proposal interferes with an agency's right to determine its budget: namely, the proposal either has to prescribe particular programs, operations or amounts to be included in an agency's budget, or the agency can substantially demonstrate that the proposal would result in significant and unavoidable cost increases that are not offset by compensating benefits.

BYPASS. Dealing directly with employees rather than with the **exclusive representative** regarding negotiable **conditions of employment** of bargaining **unit** employees. A bypass is a violation of the **Federal Service Labor-Management Relations Statute.**

CARVEOUT. An attempt, usually unsuccessful under the **Federal Service Labor-Management Relations Statute** because it fosters unit fragmentation, to carve out (or sever)--usually along occupational lines (firefighters, nurses)--a subgroup of employees in an existing bargaining **unit** in order to establish a separate, more homogenous unit with a different union as **exclusive representative.**

CERTIFICATION. The FLRA's determination of the results of an election or the status of a union as the **exclusive representative** of all the employees in an appropriate unit.

CERTIFICATION BAR. One-year period after a union is certified as the **exclusive representative** for a unit during which petitions by rival unions or employees seeking to replace or remove the incumbent union will be considered untimely. The bar is designed to give the certified union an opportunity to negotiate a substantive agreement, after which the contract can become a bar, except during the contract's 105-60 day **open period,** to a representation petition. Also see **CONTRACT BAR and ELECTION BAR.**

CHALLENGED BALLOTS. Ballots that are challenged by election observers on the ground that the person casting the ballot isn't eligible to vote because, e.g., he or she is a **management official, supervisor, confidential employee** or engaged in **personnel work.** Challenged ballots usually are kept separate and if, after tallying the uncontested ballots, it is determined that there are enough challenged ballots to affect the outcome of the election, the Authority's agents will rule on each challenged ballot to see whether it should be counted.

CHECKOFF. See **DUES ALLOTMENT.**

CHIEF STEWARD. A union official who assists and guides shop stewards. The roles he or she plays within the union are determined by the union. The roles he or she plays in administering

the contract are determined by the contract. For example, the **negotiated grievance procedure** may provide that the chief steward becomes the union representative if the grievance reaches a certain step in the grievance procedure.

CLARIFICATION OF UNIT PETITION. That portion of the FLRA's multipurpose petition not involving a **question concerning representation** that may be filed at any time in which the petitioner (union or management) asks the FLRA to determine the bargaining unit status of various employees--i.e., to determine whether they are management officials, supervisors, employees engaged in nonclerical personnel work, or confidential employees, and therefore excluded from the unit (and from the coverage of the collective bargaining agreement applicable to the unit and its negotiated grievance procedure).

COLLECTIVE BARGAINING. Literally, bargaining between and/or among representatives of collectivities (thus involving internal as well as external bargaining); but by custom the expression refers to bargaining between labor organizations and employers.

CIVIL SERVICE REFORM ACT OF 1978 (CSRA). Legislation enacted in October 1978 for the purpose of improving the civil service. It includes the **Federal Service Labor-Management Relations Statute** (FSLMRS), Chapter 71 of title 5 of the United States Code.

CLASSIFICATION ACT EMPLOYEES. Federal employees--typically professional, administrative, technical, and clerical employees (i.e., "white collar" employees)--sometimes referred to a "General Schedule" employees, to distinguish them from Federal Wage System (blue collar, Wage Grade) employees.

COLLECTIVE BARGAINING AGREEMENT (CBA). See **AGREEMENT, NEGOTIATED.**

COMPELLING NEED. Test used to determine whether a discretionary agency regulation that doesn't involve the exercise of management rights is a valid limitation on the **scope of bargaining.** There are three "illustrative criteria" of compelling need: (1) the regulation is essential to the effective and efficient accomplishment of the mission of the agency, (2) the regulation is necessary to insure the maintenance of basic merit principles, and (3) the

regulation implements a mandate of law or other authority (e.g., a regulation) in an essentially nondiscretionary manner.

CONCILIATION. See **MEDIATION.**

CONFIDENTIAL EMPLOYEE. An employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations. Confidential employees must be excluded from bargaining units.

CONDITIONS OF EMPLOYMENT (COE). Under title 5, United States Code, section 7103(a)(14), conditions of employment "means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise [e.g., by custom or practice], affecting working conditions, except that such term does not include policies, practices, and matters--(A) relating to political activities prohibited under subchapter III of chapter 73 of this title; (B) relating to the classification of any positions; or (C) to the extent such matters are *specifically provided for by Federal statute[.]"* (Emphasis added.)

CONSULTATION. To be distinguished from **negotiation.** The FSLMRS provides for two types of consultation: between qualifying unions and agencies concerning agency-wide regulations and qualifying unions and those agencies issuing Governmentwide regulations.

CONTRACT BAR. The incumbent union is protected from challenge by a rival union if there is an agreement in effect having a term of not more than three years, except during the agreement's **open period"--i.e.,** 105 to 60 days prior to the expiration of the agreement. See **ELECTION BAR and CERTIFICATION BAR.**

CONTRACTING OUT. A right reserved to management that includes the right to determine what criteria management will use to determine whether or not to contract out agency work.

"COVERED BY" DOCTRINE. A doctrine under which an agency does not have to engage in **midterm bargaining** on particular matters because those matters are already "covered by" the existing agreement.

DECERTIFICATION. The FLRA's withdrawal of a union's **exclusive recognition** because the union no longer qualifies for such recognition, usually because it has lost a representational election.

DECERTIFICATION PETITION. A petition filed by employees in an existing unit (or an individual acting on their behalf) asking that an election be held to give unit employees an opportunity to end the incumbent union's exclusive recognition. Such a petition must be accompanied by a 30 per cent showing of interest and be timely filed (i.e., not barred by election, certification or contract bars).

DIRECT EMPLOYEES. The Authority has defined this right to include discretion "to supervise and guide [employees] ... in the performance of their duties on the job." The right to direct, by itself, rarely is used as the basis for finding a proposal nonnegotiable. However, when combined with the right to assign work, it is the basis for finding proposals establishing performance standards nonnegotiable.

DISCIPLINE. A right reserved to management that the FLRA has said includes the right "to investigate to determine whether discipline is justified. " It also "encompasses the use of the evidence obtained during the investigation."

DUES WITHHOLDING (CHECKOFF). Dues withholding services provided by the agency to unions that win exclusive recognition or dues withholding recognition. If the former, the services must be provided without charge to the union. Employee dues assignments must be voluntary (no union or agency shop arrangements permitted under the **Federal Service Labor-Management Relations Statute)** and may not be revoked except at yearly intervals, but must be terminated when the agreement ceases to be applicable to the employee or when the employee is expelled from membership in the union.

DUES WITHHOLDING RECOGNITION. A very limited form of recognition, under which a union that can show that it has 10 per cent of employees in an appropriate unit as members can qualify for the right only to negotiate a dues deduction arrangement. Such recognition becomes null and void as soon as a union is certified as the **exclusive representative** of the unit.

DURATION CLAUSE (TERM OF AGREEMENT). Clause in a collective bargaining agreement that specifies the time period during which the agreement is in effect. Where an agreement has a term greater than three years, the agreement serves as a contract bar only during the first three years.

DUTY OF FAIR REPRESENTATION. "An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership."

DUTY TO BARGAIN. Broadly conceived, it refers to both (1) the *circumstances* under which there is a duty to give notice and, upon request, engage in bargaining (see **MIDTERM BARGAINING)** and (2) the *negotiability* of specific proposals. Disputes over the former usually are processed through the Authority's **unfair labor practice procedure** and frequently involve make-whole and *status quo ante* remedies. Disputes over the latter usually are processed through the Authority's no-fault **negotiability** procedure in which the Authority determines whether or not there is a duty to bargain on the proposal at issue.

ELECTION AGREEMENT. Agreement entered into by the agency and the union(s) competing for exclusive recognition dealing with campaign procedures, election observers, date and hours of election, challenge ballot procedures, mail balloting (if used), position on the ballot, payroll period for voter eligibility, and the like. Such an agreement is subject to approval by the appropriate FLRA Regional Director.

ELECTION BAR. One-year period after the FLRA has conducted a secret-ballot election for a unit of employees, where the election did not lead to the certification of a union as exclusive representative. During this one-year period the FLRA will not consider any representation petitions for that unit or any subdivisions thereof. See **CERTIFICATION BAR** and **CONTRACT BAR.**

EMPLOYEE. The term "employee" includes an individual "employed in an agency" or "whose employment in an agency has ceased because of any unfair labor practice," but does not include supervisors and management officials or anyone who participates in a strike or

members of the uniformed services or employees in the Foreign Service or aliens occupying positions outside the United States.

EQUIVALENT STATUS. Status given a union challenging the incumbent union that entitles it to roughly equivalent access during the period preceding an election to facilities and services (bulletin boards, internal mail services, etc.) as that enjoyed by the incumbent union.

EXCEPTIONS TO ARBITRATION AWARDS. A claim that an arbitration award is deficient lion ... grounds similar to those applied by Federal courts in private sector labor-management relations," or because it violates law, rule or regulation. Some of the "grounds similar to those applied by Federal courts" are: the award doesn't draw its essence from the agreement, the award is based on a nonfact, the arbitrator didn't conduct a fair hearing, or the arbitrator exceeded his/her authority.

EXCESSIVE INTERFERENCE. A balancing test that the FLRA applies to proposals that are arrangements for employees adversely affected by the exercise of management's rights in order to determine whether they are negotiable **appropriate arrangements.** The test involves balancing the extent to which the proposal ameliorates anticipated adverse effects against the extent to which it places restrictions on the exercise of management's rights.

EXCLUSIVE RECOGNITION. Under the **Federal Service Labor-Management Relations Statute,** exclusive recognition is normally obtained by a union as a result of receiving a majority of votes cast in a representational election. The rights a union is accorded as a result of being certified as the **exclusive representative** of the employees in a bargaining unit include, among other things, the right to *negotiate* bargainable aspects of the conditions of employment of bargaining unit employees, to be afforded an opportunity to be present at formal *discussions,* to free *checkoff* arrangements and, at the request of the employee, to be present at *Weingarten* examinations.

EXCLUSIVE REPRESENTATIVE. The union that is certified as the exclusive representative of a unit of employees either by virtue of having won a representation election or because it had

been recognized as the exclusive representative before passage of the CSRA. (See **EXCLUSIVE RECOGNITION)** A union holding exclusive recognition is sometimes referred to as the exclusive bargaining agent of the unit.

EXTERNAL LIMITATIONS ON THE EXERCISE OF MANAGEMENT'S RIGHTS. Discretion reserved to management isn't unfettered. Quite apart from any limitations that may be found in the collective bargaining agreement (such as an **appropriate arrangement** provision), its discretion must also be exercised in accordance with the laws and regulations that set limitations on management discretion. Only those external limitations on the exercise of certain rights can be enforced by the union under the **negotiated grievance procedure.** See **APPLICABLE LAWS.**

FAIR REPRESENTATION, DUTY OF. The union's duty to represent the interests of all unit employees without regard to union membership.

FEDERAL LABOR RELATIONS AUTHORITY (FLRA, AUTHORITY). The independent agency responsible for administering the **Federal Service Labor-Management Relations Statute** (FSLMRS). As such, it decides, among other things, representation issues (e.g., the bargaining **unit** status of certain employees), **unfair labor practices** (violations of any of the provisions of the FSLMRS), **negotiability disputes** (i.e., **scope of bargaining** issues), **exceptions to arbitration awards,** as well as resolve disputes over consultation rights regarding agency-wide and Governmentwide regulations.

For more information on the FLRA, see its webpage at http://www.flra.gov/

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS). An independent agency that provides mediators to assist the parties in negotiations. Although the bulk of its work is in the private sector, it also provides its services to the Federal sector. FMCS also maintains a roster of qualified private arbitrators, panels of which are referred to the parties upon joint request. See **MEDIATION**.

For more information on the FMCS, see http://www.flra.gov/

FEDERAL SERVICE IMPASSES PANEL (FSIP or Panel). An entity within the FLRA that resolves bargaining impasses, chiefly by ordering the parties to adopt certain contractual provisions relating to the conditions of employment of unit employees. The Panel uses many procedures for resolving impasses, including factfinding, med-arb, final-offer interest arbitration, either by the Panel, individual members of the Panel, the Panel's staff, or by ordering the parties to refer their impasse to an agreed-upon private arbitrator who is to provide services. The Panel is empowered to "take whatever action is necessary and not inconsistent with [the Federal Service Labor-Management Relations Statute] to resolve the impasse."

For more information on FSIP , see www.flra.gov/20.html

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE (FSLMRS). Title 5, United States Code, sections 7101 - 7135. The statute can be downloaded from http://www.law.comell.edu/uscode/5/ch7l.html.

FINAL-OFFER INTEREST ARBITRATION. A technique for resolving bargaining impasses in which the arbitrator is forced to choose among the final positions of the parties--rather than order adoption of some intermediate position (i.e., "split the difference"). It can apply to individual items or "Packages" of items. The theory is that each party, expecting that the interest arbitrator will pick the most reasonable of the two final offers, will have an incentive to move closer to the position of the other party in order to increase the odds that the arbitrator will select its final offer as the more reasonable of the two. This in turn narrows the gap between the parties. If the gap is narrow enough, it can be bridged by the parties themselves (by, e.g., splitting the difference).

FORMAL DISCUSSION. Under title 5, United States Code, section 7114(a)(2)(A), the **exclusive representative** must be given an opportunity to be represented at "any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any *grievance* or any personnel policy or practices or other *general condition of employment[.]"* (Italics added.)

FREE SPEECH. Under title 5, United States Code, section 7116(e), the expression of personal

views or opinions, even if critical of the union, is not an **unfair labor practice** if such expression is not made in the context of a representational election and if it "contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions." During the conduct of an election, however, management officials must be neutral. This limited right of free speech applies to agency representatives.

GENERAL COUNSEL. The General Counsel of the **Federal Labor Relations Authority** investigates **unfair labor practice** (ULP) *charges* and files and prosecutes ULP *complaints.* He/she also supervises the Authority's Regional Directors who, in turn, have been delegated authority by the FLRA to process representation petitioners.

GOOD FAITH BARGAINING. A statutory duty to approach negotiations with a sincere resolve to reach a collective bargaining agreement, to be represented by properly authorized representatives who are prepared to discuss and negotiate on any **condition of employment,** to meet at reasonable times and places as frequently as may be necessary and to avoid unnecessary delays, and, in the case of the agency, to furnish upon request data necessary to negotiation.

GOVERNMENTWIDE REGULATIONS. Regulations issued by an agency bearing on conditions of employment that must be complied with by other agencies. Such regulations are a major limitation on agency discretion and therefore on the **scope of bargaining,** which presupposes agency discretion. Agencies chiefly involved in issuing such regulations are the **Office of Personnel Management** (on personnel management) and the General Services Administration (on property management). See, also, **CONSULTATION.**

GRIEVANCE. Under title 5, United States Code, section 7103(a)(9), a grievance "means any complaint--(A) by an employee concerning any matter relating to the employment of the employee; (B) by any labor organization concerning any matter relating to the employment of any employee; or (C) by an employee, labor organization, or agency concerning--(I) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or (ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment[.]"

GRIEVANCE ARBITRATION. See **ARBITRATOR.**

GRIEVANCE PROCEDURE. A systematic procedure, devised by the parties to the agreement, by which a grievance moves from one level of authority to the next higher level until it is settled, withdrawn, or referred to arbitration. Under title 5, United States Code, section 7121, a collective bargaining agreement must contain a grievance procedure terminating in final and binding arbitration. Apart from matters that must by statute be excluded (such as grievances relating to retirement, health and life insurance and the classification of positions), the scope of the grievance procedure is to be negotiated by deciding what matters are to be excluded from an otherwise "full scope" procedure--i.e., a procedure that covers all the matters mentioned in the statutory definition of "grievance." See **NEGOTIATED GRIEVANCE PROCEDURE.**

HIRE EMPLOYEES. A right reserved to management. The Authority has said that "the probationary period, including summary termination, constitutes an essential element of an agency's right to hire under [title 5, United States Code,] section 7106(a)(2)(A)."

See **SELECT** for a discussion of the much more frequently utilized right of management, in filling positions, to make selections for appointments from any appropriate source. The relationship between the right to hire and the right to select is still unclear.

IMPASSE. See **BARGAINING IMPASSE.**

I&I (IMPACT AND IMPLEMENTATION) BARGAINING. Even where the decision to change conditions of employment of unit employees is protected by management's rights, there is a duty to notify the union and, upon request, bargain on **procedures** that management will follow in implementing its protected decision as well as on **appropriate arrangements** for employees expected to be adversely affected by the decision. Such bargaining is commonly referred to as "impact and implementation," or "I&I" bargaining, which is the commonest variety of **midterm bargaining.**

INFORMATION. The union, to the extent not prohibited by law (e.g., the Privacy Act), is entitled, under certain circumstances (see **PARTICULARIZED NEED,** below), to data "for full

and proper discussion, understanding, and negotiation of subjects within the **scope of bargaining[.]"** The agency must provide that information free of charge.

INTEREST. In **interest-based bargaining,** the concerns, needs, or desires behind an issue: *why* the issue is being raised.

INTEREST ARBITRATION. The arbitrator, instead of interpreting and applying the terms of an agreement to decide a grievance, determines what provisions the parties are to have in their collective bargaining agreement. Also see **ARBITRATION.**

INTEREST-BASED BARGAINING (IBB). A bargaining technique in which the parties start with (or at least focus on) interests rather than proposals; agree on criteria of acceptability that will be used to evaluate alternatives; generate several alternatives that are consistent with their interests, and apply the agreed-upon acceptability criteria to the alternatives so generated in order to arrive at mutually acceptable contract provisions. The success of the technique depends, in large measure, on mutual trust and a willingness to share information. But even where this is lacking, the technique, with its focus on interests and on developing alternatives, tends to make the parties more flexible and open to alternative solutions and thus increases the likelihood of agreement.

INTERNAL SECURITY PRACTICES. A right reserved to management by title 5, United States Code, section 7106(a)(1). The right to determine the internal security practices of an agency isn't limited to establishing "those policies and actions which are part of the Agency's plan to secure or safeguard its physical property against internal and external risks, to prevent improper or unauthorized disclosure of information, or to prevent the disruption of the Agency's activities." It also extends to safeguarding the agency's personnel.

INTERVENTION/INTERVENOR. The action taken by a competing labor organization (intervenor) to place itself as a contender on the ballot for a recognition election originally initiated by another union (petitioner). Non-incumbent intervenors need only produce a 10 per cent showing of interest to be included on the ballot.

INVESTIGATORY EXAMINATION. See **WEINGARTEN RIGHT.**

LABOR ORGANIZATION. A union--i.e., an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment.

LAYOFF EMPLOYEES. Right reserved to management by title 5, United States Code, section 7106(a)(2)(A).

MANAGEMENT OFFICIAL. An individual who formulates, determines, or influences the policies of the agency. Such individuals are excluded from **appropriate units.**

MANAGEMENT RIGHTS. Refers to types of discretion reserved to management officials by statute.

"**Core rights.** Consists of the rights "to determine the mission, budget, organization, number of employees, and internal security practices of the agency[.]"

"**Operational rights.** Consists of the rights to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees; to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted; with respect to filling positions, to make selections for appointments from--among properly ranked and certified candidates for promotion; or any other appropriate source; and to take whatever actions may be necessary to carry out the agency mission during emergencies.

"**Three exceptions.** The three title 5, United States Code, section 7106(b) exceptions to the above involve (1) **title 5, United States Code, section 7106(b)(1) permissive subjects** of bargaining (e.g., staffing patterns, technology) on which, under the statute, agencies can elect to bargain, (2) **procedures** management will follow in exercising its reserved rights, and (C) **appropriate arrangements** for employees adversely affected by the exercise of management rights.

1. "Permissive" subjects exception. This exemption to management's rights "staffing patterns"--i.e., with "the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty" and with "the technology, methods, and means of performing work." Under the statute such matters are, moreover, negotiable "at the election of the agency" even if the proposal also directly interferes with the exercise of a title 5, United States Code, section 7106(a) right.

2. Procedural "exception." Title 5, United States Code, section 7106(b)(2), dealing with procedures, really isn't an exception to management's rights as the Authority has held that a proposed "procedure" that "directly interferes" with a management right is not a procedure within the meaning of title 5, United States Code, section 7106(b)(2).

3. Appropriate arrangement exception. Title 5, United States Code, section 7106(b)(3) applies only if the proposal is intended to ameliorate the adverse effects of the exercise of a management right. Where such is the intent of the proposal, the Authority applies a balancing test in which it weighs the extent to which the proposal ameliorates the expected adverse effects against the extent to which it interferes with the management right and determines whether or not the specific proposal "excessively" interferes with management rights. If the interference is "excessive," the proposal isn't an "appropriate arrangement" and therefore is nonnegotiable. If otherwise, the proposal is a negotiable appropriate arrangement, even though it interferes with management's rights.

To qualify as an "arrangement" to which it would be proper to apply the excessive interference balancing test, the proposal has to be "tailored" so that it applies only to those employees who would be adversely affected by the proposed management decision.

MEDIATION. Use of a third party, usually a neutral without authority to impose a settlement, to assist the parties to reach agreement. Mediation techniques vary, but one common practice is for the labor mediator to separate the parties (in order to control communications) and meet

with them separately and, in effect, engage in interest-based bargaining with them. Because the mediator usually is a neutral who cannot impose a settlement and because he or she is expected to keep confidences, each party is more willing to be open with the mediator than with the other party (or with an interest arbitrator). Because of this greater openness, the mediator often is able to see areas of possible agreement that the parties are unable to see in direct, unmediated, negotiations.

MED-ARB (mediation followed by interest arbitration). A process in which a neutral with authority to impose (or to recommend the imposition of) a settlement, first resorts to mediation techniques in an attempt to get the parties to voluntarily agree on unsettled matters, but who can later impose a settlement if mediation fails. The theory behind it is that the parties will be more receptive to the med-arb's suggestions for settlement if they know that the med-arb has authority to impose a settlement.

MIDTERM BARGAINING. Literally, all bargaining that takes place during the life of the contract. Usually contrasted with term bargaining--i.e., with the renegotiation of an expired (or expiring) contract. Midterm bargaining includes **I&I bargaining, union-initiated midterm bargaining on new matters;** and bargaining pursuant to a reopener clause. It excludes matters that are already "covered by" the term agreement.

MISSION OF THE AGENCY. A right reserved to management by title 5, United States Code, section 7106(a)(1). Although illustrative case law on this particular right is meager, it is generally recognized that the right encompasses the determination of the products and services of an agency.

NATIONAL CONSULTATION RIGHTS (NCR). A union accorded national consultation rights is entitled to be consulted on *agency-wide* regulations before they are promulgated. NCR is to be distinguished from consultation rights with respect to *Governmentwide* regulations, under which a union accorded such recognition must be consulted on proposed Governmentwide regulations before they are promulgated.

NEGOTIABILITY DISPUTES. Disputes over whether a proposal is nonnegotiable because (a) it

is inconsistent with laws, rules, and regulations establishing conditions of employment and/or (b) it interferes with the exercise of rights reserved to management. Negotiability disputes normally are processed under the FLRA's "no fault" negotiability procedures.

NEGOTIATED GRIEVANCE PROCEDURE (NGP). A collective bargaining agreement (CBA) must contain a grievance procedure terminating in final and binding arbitration. The NGP, with a few exceptions involving statutory alternatives (e.g., adverse and performance-based actions), is the exclusive administrative procedure for grievances falling within its coverage. Apart from the matters excluded from the coverage of the NGP by statute--e.g., retirement, life and health insurance, classification of positions the NGP covers those matters specified in the definition of grievance in title 5, United States Code, section 7103(a)(9) (see GRIEVANCE, above), minus any of those matters that the parties agree to exclude from the NGP. That is, under the FSLMRS program, the parties negotiate to determine what matters to *exclude* from the procedure rather than what matters it is to *include--just the* opposite from preFSLMRS and private sector practices.

NUMBER OF EMPLOYEES OF AN AGENCY. A right reserved to management by title 5, United States Code, section 7106(a)(1). There have been no FLRA decisions in which a proposal has been found nonnegotiable because it interfered with this right.

OBJECTIONS TO ELECTION. Charges filed with the FLRA contesting election results because of alleged irregularities in the conduct of a representational election. If the objections are sustained, the FLRA could set aside the election results and order that the election be rerun.

OFFICE OF PERSONNEL MANAGEMENT (OPM). Issues **Governmentwide regulations** on personnel matters that may have a substantial impact on the **scope of bargaining**; consults with labor organizations on those regulations; provides technical advice and assistance on Labor-Management relations matters to Federal agencies; also provides information on personnel matters to Federal agencies and the general public (e.g., this annotated glossary); exercises oversight with regard to statutory and regulatory requirements relating to personnel matters; and provides support services for the National Partnership Council.

OFFICIAL TIME. At one time treated as a term of art created by title 5, United States Code, section 7131, involving paid time for employees serving as union representatives. However, the Authority has said that section 7131(d) does not preclude parties to a collective bargaining agreement from agreeing to provide official time for other matters; that is, matters other than those relating to labor-management relations activities.

Union negotiators (no more than the number of management negotiators) who also are unit employees are statutorily entitled to official time to negotiate agreements. Official time may not, however, be used to perform internal union business. Title 5, United States Code, section 7131(d) allows the parties to negotiate the amount of official time that shall be granted to specified union representatives for the performance of specified representational functions.

OPEN PERIOD. The 45-day period (105 - 60 days prior to expiration of agreement) when the union holding exclusive recognition is subject to challenge by a rival union or by unit employees who no longer want to be represented by the union. The open period is an exception to the **contract bar** rule.

ORGANIZATION. A right reserved to management. According to the FLRA, this right encompasses an agency's authority to determine its administrative and functional structure, including the relationship of personnel through lines of control and the distribution of responsibilities for delegated and assigned duties. That is, the right includes the authority to determine how the agency will structure itself to accomplish its mission and functions.

PANEL. See **FEDERAL SERVICE IMPASSES PANEL.**

PARTICULARIZED NEED. The Authority's analytical approach in dealing with union requests for information under title 5, United States Code, section 7114(b)(4). Under this approach, the union must establish a "particularized need" for the information and the agency must assert any countervailing interests. The Authority then balances the one against the other to determine whether a refusal to provide information is a **unfair labor practice.**

PARTNERSHIP. A form of employee participation established pursuant to Executive Order

12871 in which the parties are expected to deal with matters relating to improving *the performance of the agency* in a non-adversarial, non-litigious manner. The scope of partnership deliberations are broader than those of collective bargaining in that they usually include, e.g., deliberations over the conditions of employment of non-bargaining unit employees. Partnership deliberations also include deliberations over staffing patterns, technology, methods and means-matters integral to improving *agency* performance, which is the overriding purpose of the Order.

PAST PRACTICE (ESTABLISHED PRACTICE). Existing practices sanctioned by use and acceptance, that are not specifically included in the collective bargaining agreement. Arbitrators use evidence of past practices to interpret ambiguous contract language. In addition, past practices can be enforced under the **negotiated grievance procedure** because they are considered part of the agreement. To qualify as an enforceable established practice, the practice has to be legal, in effect for a certain period, and known and sanctioned by management.

PERMISSIVE SUBJECTS OF BARGAINING. There are two types of proposals dealing with so-called "permissive subjects of bargaining": proposals dealing with (1) matters covered by title 5, United States Code, section 7106(b)(l)--i.e., with staffing patterns, technology, and methods and means of performing the agency's work, and (2) matters that are not conditions of employment of bargaining unit employees. Regarding the former, it should be noted that although an agency can "elect" not to bargain on a (b)(1) matter, the President has directed heads of agencies to instruct agency management to bargain on such matters in section 2(d) of Executive Order 12871. Regarding the latter, it should be kept in mind that, apart from the statutory exclusions from the definition of **condition of employment** found in title 5, United States Code, section 7103(a)(14), a matter may be found not be a condition of employment because (1) it deals with the conditions of employment of *nonunit employees* (e.g., a proposed procedure for filling supervisory vacancies) or (2) there is no direct connection between the matter dealt with by the proposal and the work situation or employment relationship of bargaining unit employees (e.g., a proposal authorizing unit employees to hunt on a military base when off duty). Regardless of type, once agreement is reached on a permissive subject of bargaining, that agreement cannot be disapproved by the agency head, and is enforceable

under the negotiated grievance procedure.

PERSONNEL BY WHICH AGENCY OPERATIONS ARE CONDUCTED. A right reserved to management by title 5, United States Code, section 7106(a)(2)(B).

PROCEDURES. Under title 5, United States Code, section 7106(b)(2), the procedures observed by management in exercising its reserved rights are negotiable. To qualify as a negotiable (b)(2) procedure, the proposed "procedure" must not require the use of standards that, by themselves, directly interfere with management's reserved rights or otherwise have the effect of limiting management's reserved discretion.

QUESTION CONCERNING REPRESENTATION (QCR). Refers to a petition in which a union seeks to be the **exclusive representative** of an **appropriate unit** of employees, or in which employees in an existing unit want to decertify the incumbent union. The filing of such a petition is said to raise a question concerning representation--i.e., whether, and by whom, unit employees are to be represented. Such petitions are distinguished from petitions seeking to clarify the composition of existing units (e.g., whether certain individuals are in or out of the unit) or to amend the names of the parties to the exclusive bargaining relationship.

REOPENER CLAUSE. Provisions in the CBA specifying the conditions under which one or either party can reopen for renegotiation the agreement or designated parts of the agreement. Although some agreements provide for mutual consent reopeners, such reopeners are unnecessary as the parties can of course agree to reopen and renegotiate their agreement at any time, notwithstanding the contents of the agreement. The purpose of a reopener is to enable one party to *compel* the other party to renegotiate the provisions covered by the reopener.

REPRESENTATION ELECTION. Secret-ballot election to determine whether the employees in an appropriate unit shall have a union as their **EXCLUSIVE REPRESENTATIVE.**

REPRESENTATIONAL FUNCTIONS. Activities performed by union representatives on behalf of the employees for whom the union is the **exclusive representative** regarding their

conditions of employment. It includes, among other things, negotiating and policing the terms of the agreement, attending partnership council meetings, being present at **formal discussions** and, upon employee request, ***Weingarten* examinations.**

REPRESENTATION ISSUES. Issues related to how a union gains or loses **exclusive recognition** for a bargaining unit, determining whether a proposed unit of employees is appropriate for the purposes of exclusive recognition, and determining the unit status of various employees.

REPUDIATION OF AGREEMENT. Framework developed by the FLRA to determine whether (1) the breach of the agreement was clear and patent and (2) the provision breached went to the heart of the agreement.

RETAIN EMPLOYEES. A right reserved to management. Although the rights to layoff and retain appear to be opposite sides of the same coin, the FLRA rarely mentions the right to retain when invoking the right to layoff to find nonnegotiable proposals dealing with RIFs and furloughs.

SCOPE OF BARGAINING. Matters about which the parties can negotiate. See **NEGOTIABILITY DISPUTES.**

SELECT (WITH RESPECT TO FILLING POSITIONS). The statute reserves to management the right to make selections for appointments from any appropriate source. The right to select includes discretion to determine what knowledge, skills and abilities are necessary for successful performance in the position to be filled, as well as to determine which candidates possess these qualifications.

SHOWING OF INTEREST (SOI). The required evidence of employee interest supporting a representation petition. The SOI is 30 per cent for a petition seeking exclusive recognition ; 10 per cent to intervene in the election; and 10 per cent when petitioning for dues allotment recognition. Evidence of such a showing can consist of, e.g., signed and dated authorization cards or petitions.

STAFFING PATTERNS. A short-hand expression used to refer to title 5, United States Code, section 7106(b)(1)'s long-winded reference to "the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty[.]" Under the statute, agencies can elect not to bargain on such matters. However, under Executive Order 12871, the President has directed agencies to bargain on such matters.

STANDARDS OF CONDUCT FOR LABOR ORGANIZATIONS. Standards regarding internal democratic practices, fiscal responsibility, and procedures to which a union must adhere to qualify for recognition. The Department of Labor has responsibility for making known and enforcing standards of conduct for unions in the Federal and private sectors.

STEWARD. Union representative to whom the union assigns various representational functions, such as investigating and processing grievances.

SUCCESSORSHIP. Where, as the result of a reorganization, a portion of an existing unit is transferred to a gaining employer, the latter will be found to be the successor employer (thus inheriting, along with the employees, the **exclusive representative** of those employees and the collective bargaining agreement that applied to those employees) if. (a) the post-transfer unit is appropriate, (b) the transferred bargaining unit employees are a majority in the post-transfer unit, (c) the gaining employer has "substantially" the same mission as the losing employer, (d) the transferred employees perform "substantially" the same duties under "substantially" similar working conditions in the gaining entity, and (e) it is not demonstrated that an election is necessary to determine representation.

SUPERVISOR. Under title 5, United States Code, section 7103(a)(10), a supervisor is "an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising such authority[.]" The individual need exercise only one of

the indicia of supervisory authority, not a majority of them, to qualify as a supervisor for the purposes of the statute, provided it involves the consistent exercise of independent judgment.

UNFAIR LABOR PRACTICE (ULP). A violation of any of the provisions of the Federal Service Labor-Management Relations Statute. It is a term of art that is narrower in scope than the misleading adjective "unfair" suggests. ULP *charges* are filed with the Authority by an individual, a union, or an employer. They are investigated by the General Counsel who issues a ULP *complaint* if the General Counsel concludes the charge(s) have merit, and who prosecutes the matter before an Administrative Law Judge in a factfinding hearing and before the Authority, which decides the matter.

The most common agency ULPs are **duty-to-bargain** ULPs (usually a failure to give the union notice of proposed changes in conditions of employment and/or engage in impact and implementation bargaining), **formal discussion** ULPs, ***Weingarten*** ULPs, and failure-to-provide-**information** ULPs. The most common ULP committed by a union is a failure to fairly represent (see **fair representation)** all unit members without regard to union membership.

UNION. A labor organization "composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment ....

UNION-INITIATED MIDTERM BARGAINING ON NEW MATTERS. Absent a bargaining waiver, the union has the right to initiate, during the life of the existing agreement, bargaining on matters not "**covered by**" the agreement. There is a split in the circuits, which the Supreme Court has agreed to resolve, regarding this statutory right, with the D.C. Circuit holding that the union has such a right (see *NTEU* v. *FLRA,* 810 F.2d 295 (D.C. Cir. 1987), and the Fourth Circuit holding that it does not (see *SSA* v. *FLRA,* 956 F.2d 1280 (4th Cir. 1992). Also see *Dept. of Energy* v. *FLRA,* Nos. 95-2949 and -3113 (4th Cir. Feb. 13, 1997), where the 4th Circuit went further and held that the FSLMRS *prohibits* such bargaining: consequently, such a right could not be established by collective bargaining agreement.

UNIT. See **APPROPRIATE UNIT.**

UNIT CONSOLIDATION. A no-risk procedure for combining existing units into one or more larger appropriate units.

UNIT DETERMINATION ELECTION. When (a) several petitioners seek to represent different parts of an agency, (b) the proposed units overlap, and (c) the FLRA finds that more than one of the proposed units are appropriate, it lets the employees vote for units as well as unions.

***WEINGARTEN* RIGHT**. Under title 5, United States Code, section 7114(a)(2)(B), an employee being examined in an investigation (an investigatory examination or interview) is entitled to union representation if the examination is conducted by a representative of the agency, the employee reasonably believes that the examination may result in disciplinary action, and the employees asks for representation. Such examinations are called *Weingarten* examinations because Congress, in establishing this right, specifically referred to the private sector case establishing such a right.

WORKING CONDITIONS. See **CONDITIONS OF EMPLOYMENT.**

Updated 27 August 1998

DEFINITION OF ABBREVIATIONS

DOI U.S. Department of the Interior

USGS U.S. Geological Survey

GD Geologic Division (of the USGS)

ER Eastern Region (of the GD)

MIT Minerals Information Team

NFFE National Federation of Federal Employees

FLRA Federal Labor Relations Authority

LRO Bureau Labor Relations Officer

MSPB Merit Systems Protection Board

EEOC Equal Employment Opportunity Commission

RIF reduction in force

FMCS Federal Mediation and Conciliation Service

ULP unfair labor practice

FSIP Federal Services Impasse Panel

ADR alternative dispute resolution

TDD telecommunications device for the hearing disabled (deaf)

AWS alternative work schedule

EFT electronic fund transfer

CTAP Career Transition Assistance Program

IPA interagency personnel agreement

OPF official personnel folder

FPL full performance level

KASOCs knowledges, abilities, skills, and/or other characteristics

EPF employee performance file

WGI within-grade increase

ALOC acceptable level of competence

PIP performance improvement plan

STAR Special Thanks for Achieving Results (award)

LWOP leave without pay

FMLA Family Leave and Medical Act

AWOL absent without leave

OMB Office of Management and Budget

SCD service computation date

EAP Employee Assistance Program

CFC Combined Federal Campaign

LMPC Labor-Management Partnership Committee

AMENDMENTS
TO THE
NEGOTIATED COLLECTIVE BARGAINING AGREEMENT

Amendment to the

Negotiated Collective Bargaining Agreement (a Contract)

between

The National Federation of Federal Employees, Local 1957 and

Minerals Information Team

Geological Division, Eastern Region

U.S. Geological Survey, U.S. Department of the Interior

The undersigned representatives of the Employer and the Union agree to replace sections 7 and 8 of Article 15 with the following new section 7:

7. FLEXIPLACE. The Employer and the Union agree to the implementation of the USGS flexible workspace program as described in the Flexible Handbook. This handbook is available online at < http://www.usgs.gov:8888/ops/hro/benefits/flexplxe/flexplce.html >. [USGS Intranet]

November 18, 1999

Amendment to the

Nego tiated Co llective Barg aining Ag reem ent (a Co ntract)
between
The National Federation of Federal Employees, Local 1957 and
Minerals Information Team
Geological Division, Eastern Region
U.S. Geological Survey, U.S. Department of the Interior

The undersigned representatives of the Employer and the Union agree to replace section 1 of Article 15 with the new section 1:

1. GENERAL. The work week, hours of work, and scheduling will be in accordance with the USGS Alternative Work Schedule (AWS), as described in USGS Policy Memorandum 00.01 (dated F ebruary 2 2,2000) and in the AW S policy and handb ook av ailable online a t
< http://www .usgs.g ov:8888 /ops/hro /benefits/a ws/ >.
[USG S Intrane t]

May 1, 2000

MEMORANDUM OF UNDERSTANDING
BETWEEN USGS AND BUREAU OF MINES

This memorandum of understanding transfers to USGS the total responsibility for all negotiations and coordination of the NFFE Local 1957, related to the transfer of functions for the Minerals Information function. This agreement is effective as of October 25, 1995.

Chief, Division of Personnel USBM	Acting Personnel Officer USGS
November 3, 1995 DATE	November 3, 1995 DATE