

## TABLE OF CONTENTS

Article 1	PURPOSE OF AGREEMENT .....	2
Article 2	RECOGNITION .....	3
Article 3	MATTERS APPROPRIATE FOR NEGOTIATIONS .....	4
Article 4	CONTROLLING AUTHORITY.....	5
Article 5	UNION RIGHTS AND RESPONSIBILITES.....	6
Article 6	NOTIFICATIONS OF UNION OFFICIALS.....	10
Article 7	EMPLOYEE RIGHTS .....	11
Article 8	MANAGEMENT RIGHTS.....	16
Article 9	UNION USE OF FACILITES.....	17
Article 10	SPACE.....	19
Article 11	COOPERATIVE RESOLUTION PROGRAM (CRP) .....	20
Article 12	ATTENDANCE AT PROFESSIONAL MEETINGS, CONFERENCES AND JOB RELATED TRAINING .....	21
Article 13	EMPLOYEE ASSISTANCE PROGRAM (EAP).....	22
Article 14	GRIEVANCE PROCEDURE.....	24
Article 15	ARBITRATION .....	30
Article 16	HOURS OF DUTY/WORK SCHEDULES .....	32
Article 17	OVERTIME (OT) AND CALL BACKS .....	34
Article 18	LEAVE .....	36
Article 19	POSITION DESCRIPTIONS (PD'S).....	50
Article 20	DISCIPLINARY AND ADVERSE ACTIONS .....	52
Article 21	SURVEILLANCE .....	57
Article 22	PERFORMANCE MANAGEMENT.....	58
Article 23	AWARDS .....	62
Article 24	SAFETY AND HEALTH.....	64
Article 25	HAZARDOUS DUTY PAY/ENVIRONMENTAL DIFFERENTIALS .....	74
Article 26	HAZARDOUS WEATHER.....	75
Article 27	TRAINING .....	76
Article 28	AUTHORSHIP .....	78
Article 29	MERIT PROMOTION .....	79
Article 30	DUES WITHHOLDING .....	86
Article 31	OFFICIAL TIME.....	87
Article 32	CONTRACTING OUT.....	89
Article 33	REDUCTION IN FORCE (RIF) .....	90
Article 34	DURATION OF AGREEMENT.....	97

**ARTICLE 1**  
**PURPOSE OF THE AGREEMENT**

**Purpose**

- A. It is the intent and purpose of the parties to set forth a Basic Collective Bargaining Agreement (CBA) which promotes the ethical and merit 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 encourages the amicable, informal /formal and expedient settlement of disputes and grievances involving conditions of employment.
- B. The Parties agree to support, by their actions, all efforts to improve performance and processes, improve the efficient operations of the Government and to promote good will and collaborative relations among the Employer, employees, and the Union.
- C. Some of the key purposes of this agreement include, but not limited to:
  - 1. Promoting fair and equitable working conditions.
  - 2. Promoting efforts designed to aid the Agency and employees in achieving acknowledged and recognized objectives.
  - 3. Promoting cooperation, morale, responsibility and accountability at the workplace.
  - 4. Promptly addressing/adjusting differences between the Parties related to matters covered by this CBA.
  - 5. Providing a safe and healthful work environment.

**ARTICLE 2**  
**RECOGNITION AND COVERAGE**

**Section 1 – Definition of Bargaining Unit**

The Bargaining Unit (BU) will be designated to include: All employees of the Agricultural Research Service (ARS) Appalachian Fruit Research Station (AFRS) except: all management officials, supervisors, professionals, and employees described in 5 USC, 7112 (b).

**Section 2 - AFGE Exclusive Recognition**

A. As the sole and exclusive representative, the Union is entitled to act for, speak for, and to negotiate agreements covering all employees in the BU. The Union is responsible for representing the interests of all employees in the BU regardless of their status as dues paying members.

B. Due to the Union's exclusive recognition, the Agency will not deal directly with BU employees on matters such as working conditions, personnel policy or practices, or by engaging in formal discussions without Union notification. This does not include work assignments or performance discussions.

**Section 3 – Changes in the Bargaining Unit**

A. Contraction or expansion of the Unit may only be accomplished in accordance with existing statutory protocols identified in Title 5 of the United States Code.

B. When a position is going to be removed from the BU, the Agency will provide notice to the Union 30 calendar days prior to the effective date. The Federal Labor Relations Authority (FLRA) will determine whether the removal of any position from the BU is appropriate. A clarification of unit petition will be filed with the FLRA in order for this determination to be made, and the position will remain in the BU while the petition is being resolved.

**ARTICLE 3  
MATTERS APPROPRIATE FOR NEGOTIATIONS**

**Section 1- General**

As provided by 5 USC 7106(b), "Nothing in this section shall preclude any agency or labor organization from negotiating at the election of the agency:

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

**Section 2 – Nonnegotiable Items**

If the Agency declares an item nonnegotiable, it will provide the Union with a brief written description of why such a determination was made. If the Union disagrees with the Agency's written determination of non-negotiability, it may seek further consideration in accordance with 5 USC, Chapter 7117.

**Section 3 – Written Notice, Extensions, Implementation**

A. The Parties recognize the importance of efficiency of operations to meet the changing needs of the Agency and the American public that we serve. To this end, the Parties agree that when the Agency provides written notice to the designated Union Official(s) of a proposed change(s) in personnel policies, practices and working conditions of more than a de minimis nature, it will include readily available documentation/information supporting the reason for the change. Should the Union elect to negotiate, the Union will respond with written negotiable proposals within 15 business (Monday-Friday, excluding weekends and Holidays) days of receipt of the Agency's notification/proposal. Union proposals must be within the realm of the changes being proffered. Union proposals will be submitted to the identified Agency Official, with a copy to the designated Labor Relations Officer, or their designee. If the Union elects not to respond, or if written proposals are not submitted within the time limit, the Agency will have no obligation to bargain on the matter and may implement the change(s).

B. Extensions may be granted by mutual agreement provided there is no adverse impact on the Agency for granting the delay.

C. Changes will not normally be implemented until all bargaining obligations are met. If extenuating circumstances occur, the Agency will notify the Union of the situation as soon as is practicable, and the Parties may agree to post-implementation bargaining on changes in working conditions.

**ARTICLE 4**  
**CONTROLLING AUTHORITY**

**Relationship to Laws and Regulations**

A. In the administration of all matters covered by this Agreement, officials and employees shall be governed by applicable Federal laws, government-wide rules, and regulations in existence at the time this agreement is signed. The Parties recognize that these may be subsequently modified.

B. Changes in government-wide rules, regulation, law or directive, may be subject to negotiations in accordance with 5 USC, Chapter 71.

C. Where any Agency regulations conflicts with this Agreement and/or Supplemental Memorandum of Understandings, the Agreement shall govern.

**ARTICLE 5**  
**UNION RIGHTS AND RESPONSIBILITIES**

**Section 1 – Introduction**

The parties recognize that a relationship between the Union and the Agency as full partners is essential for an organization that works more efficiently and effectively and better serves customer needs, employees, Union representatives, and management.

**Section 2 - Union Rights**

A. In all matters relating to personnel policies, practices, and other conditions of employment, the parties will have due regard for the obligations imposed by 5 USC, Chapter 71, this Agreement, and the concept of a cooperative working relationship.

B. Each party shall recognize and meet with the designated representative(s) of the other party at mutually agreeable times, dates, and places that are reasonable and convenient.

C. The Agency supports and will follow statutory and contractual prohibitions against restraint, coercion, discrimination, or interference with any Union representative or employee in the exercise of his/her rights.

**Section 3 - Union Representatives**

A. The Union will designate its own representatives. The Union will provide annual notice, by January 15, to management with a current list of designated Union officials. The notification will list the following: the names, titles, and work telephone numbers of all Union officials, including the room/location of the union office and representatives. The Union will provide notification to management within fifteen (15) business days of changes in Union officials and/or representatives. Management agrees to electronically disseminate the list to all bargaining unit employees within thirty (30) days after its receipt. Further, management agrees to provide all new hires with a copy of the list during new employee orientation.

B. Union representatives will receive official time for the performance of representational duties.

C. Each Union representative shall notify their immediate supervisor when there is a need to perform representational duties. Supervisors shall make a Union representative available for such business within a reasonable time. A steward entering a work area that is not their own will report to the supervisor-in-charge upon arrival and departure. The Union representative shall also notify their immediate supervisor upon their return to their own work site. The supervisor will approve requests of official time for such business within a reasonable time. Before entering a work area under a supervisor other than their own, the Union representative will contact the supervisor of the employee(s) and state the general nature of the Union-Management business they intend to transact. The supervisor will, circumstances permitting, make the employee available. There may be occasions when the workload will prevent the granting of such time until a later time but no later than twenty-four (24) hours unless by written mutual agreement of

the parties. Upon leaving work areas and returning to their own work area Union officials will inform the responsible supervisors of their status.

#### **Section 4 - Formal Discussions**

A. Pursuant to 5 USC, 7114 (a) (2) (A), the Union shall be given the opportunity to be represented at any formal discussion between one or more employees it represents and one or more representatives of the Agency concerning any grievance (to include settlement discussions) or any personnel policy or practice or other general condition of employment. This right to be represented does not extend to informal discussions between an employee and a supervisor concerning a personal problem, counseling, routine performance discussions, or work methods and assignments.

B. The representative designated by the Union and the Union vice president will be given no less than a twenty-four (24) hour advance notice of any formal discussion that is to be held. This advance notice will be given unless management has been prevented from doing so due to an emergency. In situations involving a meeting with a large group of bargaining unit employees, management will provide notice at a minimum of two (2) business days or as soon as practicable.

C. The Union representative will be permitted to ask relevant questions, and to present a brief statement before the end of the meeting outlining the Union's position concerning the issues presented by management, and to have full participatory rights during the meeting to the extent accorded to other employees. This forum is not intended for discussion of personal or individual circumstances/scenarios in group settings. The Union representative is not merely acting as an observer.

#### **Section 5 - Investigatory Examinations**

A. As provided in 5 USC, 7114 (a) (2) (B) and Section 4 of Article 34, Disciplinary and Adverse Actions, the Union has the right to be represented at any examination of an employee in the bargaining unit by a representative of the Agency in connection with an investigation if:

1. The employee reasonably believes that the examination may result in disciplinary action against the employees; and
2. The employee requests representation.

B. The Union will determine which representative will be assigned to any particular investigatory examination.

C. The Union representative will be given no less than twenty-four (24) hour notification of such meetings unless precluded by a situation that is urgent in nature. Once the employee requests representation, no further questioning will take place until the representative arrives. If the representative is not available due to work schedules or other representational business, the examination will be postponed and rescheduled by mutual agreement.

D. The Union representative will have the opportunity to request the subject of the meeting as well as an opportunity meet with the employee prior to the examination.

#### **Section 6 - Notification of Changes in Conditions of Employment**

The Agency shall provide reasonable advance notice to the appropriate Union official(s) prior to changing conditions of employment of bargaining unit employees. The Agency agrees to forward, along with the notice, a copy of any and all information/material relied upon to propose the change(s) in conditions of employment. All notifications shall be in writing to the appropriate Union official, with sufficient information to the Union for the purpose of exercising its full rights to bargain.

#### **Section 7 - Information**

The Agency agrees to provide the Union, upon request, with information that is normally maintained, reasonably available, and necessary for the Union to effectively fulfill its representational functions and responsibilities. This information will be provided to the Union within a reasonable time and at no cost to the Union.

#### **Section 8 - New Employee Orientation**

A. The Union will provide to new bargaining unit employees a package of Union materials (a copy of the current collective bargaining agreement, and a list of AFGE Local 43 Officers and/or representatives).

B. Management will introduce the Union representative during the orientation process.

C. The Union will have the right to discuss the benefits of being a Union member and its internal structure. The Union will not use this time to solicit new members, nor to discuss internal Union business, nor to malign, disparage the Agency, its management or its employees, nor slander or libel a government official.

D. The Union will be given access to conference rooms for meetings requiring the size and space necessary for Union meetings and membership drives, before or after duty hours or during lunch periods if such space is not already committed. The Union will follow the same reservation process and use procedures as all other users.

#### **Section 9 - E-Mail**

A. The Union may communicate with Agency/management officials, bargaining unit employees, neutral third parties, or members of the public via the Agency's e-mail system to conduct Union business. The Agency will provide the Union with a dedicated e-mail address. The Union will comply with all security measures enforced on other users. The Union may send messages to more than one recipient at a time in accordance with USDA Department/ARS policies.

B. The Union will be judicious in the use of attachments to e-mail messages and follow any applicable USDA Department/ARS policies.

C. The Agency will provide the Union a dedicated e-mail address.

D. The Union will have access to the electronic global directory.

E. The Agency will not alter or censor the content of any direct communications between the Union and employees. However, Agency facilities will not be available for posting or distribution of libelous or defamatory material directed at Agency or Union officials or programs.

### **Section 10 - Surveys and Questionnaires**

A. The Agency will not communicate directly with bargaining unit employees through verbal or written surveys and questionnaires regarding conditions of employment without prior notification to the Union and bargaining where appropriate. Nothing in this section precludes the Union from the right to bargain over conditions of employment under the 5 USC, Chapter 7106.

B. Participation in surveys will be voluntary, unless the parties agree to require participation. Employees will be assured that their responses will be confidential and their anonymity protected, unless the parties agree otherwise.

C. The results of surveys conducted by either party regarding conditions of employment will be shared. If a third party conducts a survey and the results are distributed to the Agency, the results will be shared with the Union.

### **Section 12 - Bulletin Boards**

A. At each facility, the Union will be provided space on bulletin boards in areas normally used for communicating to employees. Numbers and location of bulletin boards will be determined jointly between labor and management in accordance policies.

### **Section 13 - Distribution of Informational Material**

A. Management will provide space for the purpose of distribution of Union material. The space will be in prominent locations as agreed upon.

B. The distribution of literature will be permitted provided it is done during non-duty hours of the distributor and does not interfere with the mission of the facility.

**ARTICLE 6**  
**NOTIFICATION OF UNION OFFICIALS**

The Union is permitted to publish and update the names, work locations, and telephone numbers of the Union Officials on the shared drive and the Union bulletin board.

The Union agrees to provide Management and the Labor Relations Officer a current list of names, email, physical addresses, and telephone numbers of its Union Officials on a bi-annual basis (Jan 1 and July 1) and when a change in Union Officials occurs.

**ARTICLE 7  
EMPLOYEE RIGHTS**

**Section 1 - General**

A. In an atmosphere of mutual respect, all employees shall be treated fairly and equitably and without discrimination in regard to their political affiliation, Union activity, race, color, religion, national origin, gender, sexual orientation, sexual preference, marital status, age, or non-disqualifying handicapping conditions. Employees will also be afforded proper regard for and protection of their privacy and constitutional rights. It is therefore agreed that Management will endeavor to establish working conditions which will be conducive to enhancing and improving employee morale and efficiency.

B. Instructions will be given in a reasonable, respectful, and constructive manner. Such guidance will be provided in an atmosphere that will avoid public embarrassment or ridicule. If an employee is to be served with a warrant or subpoena, it will be done in private without the knowledge of other employees to the extent it is within Management's control.

C. No disciplinary or adverse action will be taken against an employee upon an ill-founded basis such as unsubstantiated rumors or gossip.

D. No employee will be subjected to intimidation, coercion, harassment, or unreasonable working conditions as reprisal nor be used as an example to threaten other employees. An employee who exercises any statutory or contractual right shall not be subjected to reprisal or retaliation, and shall be treated fairly and equitably.

**Section 2 - Rights to Union Membership**

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

- a. any formal discussion between one or more representatives of the Agency and one or more employees in the unit, or their representatives concerning any grievances or any personnel policy or practices or other general condition of employment, or;
- b. any examination of an employee in the unit by a representative of the agency in connection with an investigation if:
  - (1) the employee reasonably believes that the examination may result in disciplinary action against the employee; and
  - (2) the employee requests representation,"

### **Section 3 - Employee Rights During Investigations**

An employee has the right (commonly known as the Weingarten right) to be represented by the Union during any examination of the employee by a representative of the agency in connection with an investigation if he or she reasonably believes that the examination may result in disciplinary action against him or her and he or she requests representation.

### **Section 4 - Rights to Union Representation**

Management recognizes an employee's right to assistance and representation by the Union, and the right to meet and confer with Union representatives in private during duty time, consistent with Article 8. If the employee and the local representative cannot be released immediately, the employee will be released for a mutually agreed time frame between the parties. If such release is not made, appropriate relief from time frames will be afforded. The Agency agrees to annually inform all employees of the right to Union representation under 5 USC, 7114 (a) (2) (B) by appropriate means.

### **Section 5 - First Amendment Rights**

Employees have the right to present their views to Congress, the Executive Branch, or other authorities and to otherwise exercise their First Amendment rights without fear of penalty or reprisal.

### **Section 6 - Access to Documentation**

A. Employees have a right to be made aware of and receive copies of any information specific to them personally maintained under their name and/or social security number. The Agency agrees that the official record of the employee is the eOPF.

B. Employees have a right to access information pertaining to conditions of employment such as laws, rules and regulations published by the Office of Personnel Management, the U.S. Department of Agriculture, etc. These publications or policies are available for employees to review on the Employer's and other government agencies' websites.

### **Section 7 - Personal Rights**

A. Employees have the right to engage in outside activities and employment of their own choosing and otherwise conduct their private lives as they see fit in accordance with 5 CFR 2635 and 5 CFR, 735 and 5 CFR. 8301.

B. It is understood that if an employee engages in outside employment it should not impair their ability to perform his or her job.

C. Without prior approval, an employee may participate in the activities, not prohibited by law or government-wide regulation, of national or state political parties and may participate in the affairs of or accept an award for a meritorious public contribution or achievement given by a

charitable, religious, professional, social, fraternal, and non-profit educational and recreational, public service, or civic organization.

D. An employee shall not: accept a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which the acceptance may result in or create the appearance of conflicts of interest.

### **Section 8 - Dignity and Self Respect In Working Conditions**

Employees, individually and collectively, have the right to expect, and to pursue, conditions of employment which promote and sustain human dignity and self-respect.

### **Section 9 - Employee Right to Privacy**

A. Searches and seizures by the Agency of the private property of its employees are subject to Constitutional constraints. It should be understood that employee's person and personal items owned by the employee, such as vehicles, pocketbooks, briefcases, or other like materials, are not subject to search without reasonable suspicion that criminal activity is involved.

B. Employees may store personal papers and effects in their offices, desks, file cabinets, lockers, and government vehicles. However, a search or seizure of such items without a warrant may be justified if the Agency has reasonable grounds for suspecting that the search will produce evidence that the employee is guilty of work-related misconduct, or that the search is necessary for a non-investigative work-related purpose, such as insuring the internal security of the Agency. Security concerns may necessitate searches of Agency space or employees, subject to Constitutional constraints.

C. If a search is to be conducted, the primary investigator and an independent party will be present for the search. The employee will be notified prior to the search depending on the circumstances necessitating the search.

D. As an exception, if searches are used when individuals enter a facility, then such search methods must be conducted consistently for all individuals.

### **Section 10 - Whistle-Blower Protection**

Consistent with the Whistleblower Protection Act, currently codified at 5 USC, 2302 (B) (8), employees shall be protected against reprisal of any nature for the disclosure of information not prohibited by law or Executive Order which the employee reasonably believes evidences a violation of law, rule or regulation, or evidences mismanagement, a waste of funds, an abuse of authority, or danger to public or employee health or safety.

### **Section 11 - Unlawful Orders**

An employee has the right to refuse orders that would require the employee to violate an applicable law or cause imminent danger. The employee will promptly bring his/her specific

concerns to the supervisor or appropriate Agency official. The Agency official will consider the employee's concern and promptly notify the employee whether the order is lawful or unlawful. This refusal to obey an unlawful order or one that could cause imminent danger will not subject the employee to disciplinary or adverse action.

### **Section 12 - Improper Orders**

An employee has the right to question an improper order that would direct him/her to act outside the scope of practice, privileges, competencies, or qualifications. The employee will promptly bring his/her concern about the improper order to an appropriate supervisor. The supervisor will promptly apprise the employee whether the order was proper or improper. A refusal to obey an improper order will not subject the employee to disciplinary or adverse action or major adverse action.

### **Section 13 - Conflicting Orders**

When employees receive conflicting orders, the employee will bring the conflict to the attention of the supervisor who gave the last order or another appropriate supervisor. The employee will be given a clarified order. The employee will not be subject to disciplinary, major adverse actions for the following the clarified order.

### **Section 14- Copies of Agreement**

The Agency will provide to each employee on duty as of the date of this Agreement and to all unit employees entering on duty after that date at no cost, electronic copies of this Agreement. The employee will be able to print a copy of the collective bargaining agreement using Agency equipment. This Agreement will be made available on the Agency's computer system.

### **Section 15-Small Appliances**

A. Subject to management approval, personal appliances (such as microwave, coffee maker, personal space heaters, personal refrigerators, or radio), will be permitted in designated areas, provided they are initially approved by Management with jurisdiction over the area in question, they are installed safely and conform to all safety regulations, and the use of such does not adversely affect the employees' performance and/or the work environment of others. It shall be the employee's responsibility to ensure compliance.

B. The Location will provide and maintain refrigerator(s), and microwaves for storing, cooking and warming of food, respectively, in the lunchroom areas for general employee use.

C. The location will maintain the stove, subject to funding availability.

### **Section 16-Laboratory Clothing**

The Location will provide laboratory clothing as required for safety and protection of clothing of employees working in laboratory spaces.

**Section 17-Wash Station**

The Agency will maintain paper towels and soap at the Head House sink for the purpose of cleaning before entering the Main facility.

**ARTICLE 8  
MANAGEMENT RIGHTS**

**Section 1- Rights and Obligations of the Employer**

A. This article shall be administered in accordance with 5 USC, Chapter 71, appropriate government-wide rules, and the terms of this agreement. Management officials of the agency retain the following rights outlined in 5 USC, 7106, Management Rights; these include, but are not limited to the following:

1. determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
2. in accordance with applicable laws;
  - a. hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or to take other disciplinary action against such employees;
  - b. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the agency operations shall be conducted;
  - c. with respect to filling positions, to make selections for appointments from:
    - (a) among properly ranked and certified candidates for promotion; and
    - (b) any other appropriate source; and
    - (c) take whatever actions may be necessary to carry out the agency mission during emergencies.

B. In accordance with Article 3, "Matters Appropriate for Negotiations," the Agency retains the right to implement changes after bargaining obligations have been met, or impasse has been reached.

C. Management officials and supervisors retain the right to meet with unit employees and without the presence of a union representative concerning any matter not covered by 5 USC, 7114 (a)(2).

**ARTICLE 9**  
**UNION USE OF FACILITIES**

**Section 1 - General**

A. Management recognizes the importance and value of the Union's mission and purpose. Accordingly, Management agrees to furnish office space to the Union appropriate for carrying out its representational duties in locations easily accessible to employees within the main building provided it does not conflict with official functions and activities occurring between Monday through Friday during the hours of 8:00 a.m. and 4:30 p.m.

B. Additionally, the Union recognizes the Agency costs associated with providing this equipment and the Union's responsibility for proper care and safeguarding of facilities and equipment provided.

**Section 2 – Location and Equipment**

A. The Union is responsible for ensuring accessibility to its space during normal cleaning and maintenance schedules. However, the Agency retains the right to access the room for internal security purposes and other essential functions.

B. The Agency will maintain a computer, office phone, printer, locking file cabinet for the office.

C. Management agrees to allow the Union reasonable use of the copier, fax machine, printers, telephone system, internet access, and public address system for official Union business.

D. Telephones issued to Union Officers as a function of their positions of record, will be available for representative work in accordance with the Agency "Limited Personal Use Policy" for government electronic equipment.

**Section 3 – Standards**

A. The Parties understand that the equipment provided will be subject to all Agency required computer and electronic security, maintenance, updating, and safeguarding measures.

B. The Parties agree that the Union Officers will follow the Agency's "Limited Personal Use" policy for the use of all Agency provided electronic equipment and the Union may be responsible for payment of excessive fees incurred for the use of such equipment.

- a) Agency provided items provided will be replaced in accordance with the Agency's existing replacement schedule, contingent upon funding and other resource constraints.
- b) The Union must make a written request to conduct labor relations training sponsored by the Union that is approved by the Agency, at ARS. Requests should include date, time, purpose, space and equipment requirements, and the duration of need for the facility. The Agency will provide a response to the request in writing to the Local Union Vice President or designee.

C. The Union retains the right to purchase and use equipment it deems necessary that is not provided in this Article. It is the Union's responsibility to assure that such equipment is properly identified as non-Agency equipment (personal property), and to follow existing Agency rules or directives for the introduction and use of personal property at the facility. (This includes rules regarding the introduction of, or attachment to, any Agency electronic equipment and includes computer program downloads or other software applications).

**Section 4 – Transactional Non-Representational Activities**

Management agrees that an individual may transact non-representational Union business before or after duty hours or during lunch periods. The Union agrees that such activities will take place only in the Union office or conference room as scheduled and available.

**Section 5 – Bulletin Board(s)**

Management will provide the Union with reasonable space on an Official Bulletin Board for the posting of Union information.

## **ARTICLE 10 SPACE**

### **Section 1 – Locker Space**

Management agrees to maintain current lockers in the main building and farm center. Any changes to the current lockers will be appropriately bargained.

### **Section 2 – Office Space**

Management will make a good faith effort to improve the office space of the staff.

### **Section 3 – Office Equipment**

When justified by Mission requirements, an effort will be made to equip each individual office space occupied by a Bargaining Unit Employees to include those in the main building and farm center with a working telephone and a computer with a LAN port. Use of all equipment will be in accordance with Agency policies and procedures. Should staffing concerns render the above requirement unattainable, the Parties will work to resolve the impact and implementation of new arrangements that might be necessary.

**ARTICLE 11**  
**COOPERATIVE RESOLUTION PROGRAM (CRP)**

Employees who wish to use the CRP (a voluntary program that uses mediation to resolve disputes) have the right to use the program. If the issue is not resolved by mediation, the time frames for filing a negotiated grievance shall not start until all good faith efforts have been exercised.

**ARTICLE 12**  
**ATTENDANCE AT PROFESSIONAL MEETINGS, CONFERENCES**  
**AND JOB RELATED TRAINING**

The Union recognizes Management's discretion and right to assign work which includes the participation in meeting/conferences/training. The Parties agree that attendance by technical support staff at professional meetings/conferences/training is a way for the staff to become more familiar with current research. The Parties agree that the current research available at these meetings/conferences/training may include more efficient or safer techniques. The Parties also agree that by continually training technical support staff in current methods of research the mission of the Agency may be executed more efficiently and safely.

**ARTICLE 13**  
**EMPLOYEE ASSISTANCE PROGRAM (EAP)**

**Section 1 – Program Purpose**

The purpose of the Employee Assistance Program (EAP) is the appropriate prevention, treatment and rehabilitation of employees with alcohol, drug abuse or other biopsychosocial problems that are adversely affecting the employee's job performance and/or conduct. Biopsychosocial problems may include physical, emotional, financial, marital, family, legal, or vocational issues. Employees who suspect they may have such a problem, even in the early stage, are encouraged to voluntarily seek counseling and information on a confidential basis by contacting the individual(s) designated to provide such services. Supervisors are also encouraged to note when employees appear to be experiencing difficulties for which EAP may provide assistance, and to refer the employee to EAP for assistance. Early intervention may be helpful in returning the employee to full productivity.

**Section 2 - Record of Participation**

The Agency will assure that no employee will have job security or promotion opportunities jeopardized by a request for counseling or referral assistance. The Agency will ensure that the confidentiality of medical records of employees concerning treatment for problems related to alcohol, drugs, emotional concerns, or other personal issues will be preserved in accordance with current public laws and OPM regulations or successors.

**Section 3 - Voluntary Participation and Employee Responsibility**

The existence and functions of counseling and referral programs will be publicized to employees. No employee will be required to participate or be penalized for merely declining referral to counseling services or for participating in the services provided.

**Section 4 - Confidentiality**

A. The parties recognize that all confidential information and records concerning employee counseling and treatment will be maintained in accordance with applicable laws, rules, and regulations.

B. Without an employee's specific written consent, the supervisor may not obtain information about the substance of the employee's involvement with a counseling program. Information obtained with the employee's authorization from such counseling programs may not serve as the basis for disciplinary or adverse actions.

**Section 5 - Excused Absence**

A. A supervisor and/or manager shall grant up to 1 hour of excused absence for each counseling session, up to a maximum of 6 sessions per calendar year, during the assessment/referral phase of rehabilitation.

B. Reasonable time to and from the scheduled appointment will be granted as an excused absence in accordance with individual circumstances. The employee will be required to notify their immediate supervisor as soon as practicable if the agreed upon circumstances were to change. If additional time is required, the employee will request leave as soon as practicable and the request will be approved in accordance with existing leave policies and this Collective Bargaining Agreement.

C. Supervisors will release employees for EAP visits as soon as practical and as soon as work requirements allow. The Parties will encourage employees to make appointments with the EAP professional.

D. The number of excused absences for EAP counseling services will be consistent with the current Departmental/Agency Regulation or successors.

#### **Section 6 - Leave Associated with EAP**

It is the policy of the Agency to grant leave (sick, annual, or LWOP) for the purpose of treatment or rehabilitation for employees under the Employee Assistance Program as would be granted for employees with any other health problem.

**ARTICLE 14**  
**GRIEVANCE PROCEDURES**

**Section 1 – Purpose**

The purpose of this Article is to provide a mutually acceptable method for the prompt and equitable settlement of grievances filed by BUE's, the Union or the Agency.

**Section 2 – Coverage and Scope**

A. A grievance means any complaint:

1. by an employee(s) concerning any matter relating to employment of the employee;
2. by the Union concerning any matter relating to the employment of any employee;  
or
3. by any employee(s), the Union or the Agency concerning:
  - a. the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or
  - b. any claimed violation, misinterpretation or misapplication of any law, rule or regulation affecting conditions of employment.

B. Grievances on the following matters are excluded from the scope of this procedure:

1. any claimed violation of subchapter III of chapter 73 of Title 5, USC relating to prohibited political activities;
2. retirement, life insurance or health insurance;
3. a suspension or removal under 5 USC, 7532 relating to national security;
4. any examination, certification selection or appointment; or
5. the classification of any position which does not result in the reduction in grade or pay of an employee;
6. separation of employees during their probationary period;
7. adverse actions appealed to Merit System Protection Board (MSPB).

**Section 3 – Exclusivity**

A. Grievances may be initiated by employee(s) covered by this Agreement and/or their Union representative or by the Agency. Representation of BUE's shall be the sole and exclusive province of the Union.

B. Except as provided by law, this is the exclusive procedure available to BUE's, the Union, or the Agency for the resolution of grievances within its scope.

#### **Section 4 – Representation**

A. Prior to filing a grievance, an employee may elect to be self-represented or represented by the Union. When an employee elects to be represented by the Union, the Union Vice President or designee will appoint that representative.

B. In accordance with 5 USC, Chapter 71, the Union has the right to be present during any proceeding under the negotiated grievance procedure. The Agency will provide the Union reasonable advance notice of any grievance meeting/discussion when the Union is not the designated representative.

C. If the Union is not the designated representative, a copy of the grievance will be provided to the Union normally within ten (10) business days of the filing date. A copy of each grievance decision will be provided, in a timely manner, to the Union.

D. An employee will be notified of their right to Union representation. At the time of notification the employee and/or the Union will submit a written notification to management identifying the selection of Union representation or their declination of Union representation.

E. Management will forward the written notification of the election or declination of Union representation to the Union Vice President or designee.

F. The parties agree to develop a standard form that will be available to all employees on the shared drive.

G. Where the grievant elects Union representation, meetings and communication with regard to the grievance and any attempts at resolution shall be made through the designated Union representative.

H. The parties agree efforts will be made to schedule meetings by mutual agreement within a reasonable time period.

#### **Section 5 – Resolution of Grievances and Employee Standing**

A. The Union and the Agency agree that grievances should be settled in an orderly, prompt, and equitable manner so that the efficiency of the Agency may be maintained and morale of employees shall not be impaired. Efforts shall be made by the Agency and the Union to settle grievances at the lowest appropriate level of supervision. Employees and their representatives will be unimpeded and free from restraint, interference, coercion, discrimination, or reprisal,

consistent with 5 USC, Chapter 71, and this Agreement, in seeking adjustment of grievances. Employees shall be authorized a reasonable amount of duty time (requested in advance and mutually agreeable with management) to prepare and participate in grievances, including individual or group grievances.

B. In cases of group grievances, the Union may select spokesperson(s) from the grieving group who can serve as a group representative to assure efficient use of government time.

#### **Section 6 – Grievability/Arbitrability Questions**

The parties agree to raise any questions of grievability or arbitrability of a grievance prior to the limit for the written answer in the final step of this procedure.

#### **Section 7 – Time Limits**

A. A grievance concerning any matter relating to the employment of the employee may be presented at any time.

B. All the time limits in this Article may be extended by mutual consent.

#### **Section 8 – Options**

A. In accordance with 5 USC, 7121, an employee at his/her option may raise matters covered under Sections 4303 (Unacceptable Performance) and 7512 (Adverse Actions) under the appropriate statutory procedures or the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his/her option at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing, whichever event occurs first.

B. Similarly, an employee affected by a prohibited personnel practice under 5 USC, 2302 (b) (1) of the Civil Service Reform Act may raise the matter under a statutory procedure or the negotiated procedure but not both. An employee shall be deemed to have exercised his/her option at such time as he/she timely files a grievance in writing or files a formal complaint under the statutory EEO procedure, whichever event occurs first.

C. Complaints of employment discrimination may be raised as a grievance or as a statutory equal opportunity complaint, but not both.

#### **Section 9 – Procedures for Employee Grievances**

A. The written grievance should normally contain a description of the matter(s) being grieved, including:

1. The Article(s) of the Agreement, law, rule, or regulation alleged to have been violated, or to the employment condition(s) in dispute;

2. statement of the circumstances giving rise to the grievance including the date, if applicable, of the alleged violation(s);
3. the name of the management official(s) or others alleged to have committed the action grieved;
4. name and position title of the grievant(s) with work telephone number(s);
5. name of Union Representative (if any); and
6. the desired relief.

B. Grievance meetings under this procedure normally will be face-to-face, although alternate options may be made available upon mutual agreement by the parties. The grievant and the Union representative will meet with the designated Management Official and an Agency representative (if one is designated). The Union and management may be permitted to have an equal number of representatives at all steps of the grievance procedure. If an agency representative is designated; the Union will be apprised who the representative will be. Normally, this notice will occur not less than three (3) business days in advance of the meeting.

C. Grievances may be hand delivered or delivered through e-mail. The recipient of the grievance shall sign and date the grievance if hand delivered or reply via email. If the grievance is delivered via e-mail and an acknowledgement of receipt of the grievance has not been received within seven (7) calendar days, the parties will assume the grievance has been delivered and received. Timelines will be preserved if the serving party is able to show the grievance was delivered via email.

D. Management officials designated to be grievance deciding officials will have the authority to resolve the grievance. The designee will not be someone who decided the issue at a previous step.

E. Grievances should normally be resolved at the lowest level possible.

F. Through mutual agreement of the parties, the grievance timeline(s) will be placed in abeyance to allow the parties to come to consensus or resolution prior to filing a grievance.

G. All grievance decisions will be in writing and state the issue being grieved, a summary of the findings and the rationale for the decision. Copies of relevant documents cited in the decision will be provided if they are not otherwise readily available to the employee.

## **Section 10 – Grievance Process**

Step 1:

- A. An employee and or the Union shall present the grievance according to procedures in Section 9 (as listed above). The grievance will be submitted in writing within 25 business days of the date that the employee or Union became aware, or should have become aware, of the act or occurrence; or anytime if the act or occurrence is of a continuing nature.
- B. The management official receiving the grievance will meet with the grievant and/or Union representative, at the request of any party, and provide a written response within 15 business days of receipt of the grievance.
- C. The grievance response will include the designation of the next level deciding management official to whom the grievance would be advanced, at the election of the grievant and/or representative. The Step 1 official will provide the Step 1 response within ten (10) business days from the date of the meeting.

Step 2:

- A. If the grievance is not satisfactorily resolved at Step 1, it may be presented to the Step 2 Management Official or designee, named in the written decision letter within ten (10) business days of receipt of the response. The Step 2 Management Official receiving the grievance will meet with the grievant and/or Union representative, at the request of any party, within ten (10) business days of receipt of the grievance. The Step 2 official will provide the Step 2 response within ten (10) business days from the date of the meeting.
- B. The grievance response will include the designation of the next level deciding management official to whom the grievance would be advanced at the election of the grievant and/or representative.

Step 3:

- A. If the grievance is not satisfactorily resolved at Step 2, it may be presented to the Step 3 Management Official or designee, named in the written decision letter within ten (10) business days of receipt of the response. The Step 3 Management Official receiving the grievance will meet with the grievant and/or Union representative, at the request of any party, within ten (10) business days of receipt of the grievance. The Step 3 Management Official will provide the Step 3 response within ten (10) business days from the date of the meeting.
- B. If the grievance is not satisfactorily resolved in Step 3, the grievance may be referred to arbitration as provided in Article 13 Arbitration. Only the Union or Management can refer a grievance to arbitration.

**Section 11 – Management Grievances**

- A. A management grievance concerning a continuing practice or a single event may be presented at any time and filed with the Union Vice President and/or designee. A grievance concerning a

particular act or occurrence must be presented to the other party within 25 business days of the action or date the moving party became aware of it. The grievance will be filed at the Step 3 level; the Step 1 time lines will apply.

B. When a grievance is filed, the parties will meet and/or discuss the matter within 15 business days after receipt unless the grieving party waives the meeting/discussion or obtains an extension. A written decision will be issued within 15 business days of the meeting or of the date of waiver. If the grievance is not settled by this method, the grieving party may invoke arbitration.

D. Grievance decisions will be in writing and state the issue being grieved, a summary of the findings and the rationale for the decision. Copies of relevant documents cited in the decision will be provided if they are not otherwise readily available to the parties.

## **ARTICLE 15 ARBITRATION**

### **Section 1 – Filing for Arbitration**

Any grievance not considered satisfactorily resolved within the grievance procedure may be submitted to arbitration. Filings for arbitration may be made only by the Union or the Agency. Notice of intent to file for arbitration must be provided to the opposite party within 30 calendar days of filing the notice of intent to invoke arbitration. The moving party shall request a listing of seven (7) impartial persons from the Federal Mediation Conciliation Service (FMCS).

### **Section 2 – Selection of an Arbitrator**

The parties shall meet within ten (10) business days after receipt of such list to select an arbitrator (this may be done by telephone or other various means of communications). If the parties cannot mutually agree on one of the listed arbitrators, then the Agency and the Union will alternately strike one potential arbitrator's name from the list and will then repeat this procedure until one name remains.

### **Section 3 – Notification of Selection of Arbitrator**

Following the selection, the parties will within ten (10) business days, notify FMCS of the name of the arbitrator selected. The parties will jointly notify the selected arbitrator, dates and times will be mutually agreeable to all parties. The time limits may be extended by mutual consent.

Both parties shall be entitled to call and cross-examine witnesses before the arbitrator. All bargaining unit witnesses, necessary for the arbitration will be on duty time if otherwise, in a duty status.

### **Section 4 – Hearing Procedures**

Procedures concerning the order of hearing shall be as determined by the Arbitrator in the event the parties cannot agree. Normally, in disciplinary and adverse action cases the moving party shall be the Agency.

### **Section 5 Fees, Expenses, and Transcripts**

A. The arbitrator's fees and expenses shall be paid equally by the parties. The Parties agree that upon receipt of the award and billing documents from the arbitrator, the fees will be paid in a prompt and timely manner.

B. If either party requests a transcript, that party will bear the entire cost of such transcript. If a transcript is mutually requested the cost will be paid equally by the parties.

C. The cost of arbitration expenses for threshold or enforcement issues will be paid equally by both parties.

**Section 6 – Witness Lists and/or Information**

A. The parties agree to exchange witness lists and /or information that is germane to the case with each other prior to the arbitration. Witness lists and/or other germane information to the case will be exchanged not later than 10 business days prior to the scheduled arbitration.

B. The arbitrator's decision shall be final and binding. However, either party may file an exception to the arbitrator's award in accordance with applicable law and regulation(s). Any dispute over the interpretation of an arbitrator's award shall be returned to the arbitrator for clarification.

C. The Arbitrator shall render a decision on the matter within 30 days after the closing of the record unless the parties agree to other arrangements. A copy of the decision shall be furnished to each of the parties, along with an original bill or invoice for services rendered.

**Section 7 – Arbitrator Decision**

The decision of the Arbitrator is binding except that either Party may file an exception to the award with the FLRA as permitted by law and regulation.

## **ARTICLE 16**

### **HOURS OF DUTY/WORK SCHEDULES**

#### **Section 1 – General**

This article shall be administered in accordance with Title 5, USC, Chapters 61, Title 5, Code of Federal Regulations, and this Agreement. The purpose of this article is to prescribe the policies covering hours of work for all Bargaining Unit employees in accordance with applicable law and regulation.

#### **Section 2 – Core Hours**

Location core hours will be 10:00 a.m.-2:00 p.m. Monday through Friday.

#### **Section 3 - Notification of Schedules and Schedule Changes**

A. Notice of management directed changes in an employee's tour of duty to meet programmatic needs will be provided to the Union seven (7) calendar days in advance of the change, when possible. The Union will notify the Agency if it demands to bargain regarding such change.

B. Schedule changes require supervisory approval prior to the change.

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

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

#### **Section 4 – Breaks**

A. Bargaining Unit Employees will be allowed one (1) fifteen-minute break period during each assigned four (4) hours of duty, whenever practical. Breaks encompass the time period from the time the employee leaves and returns to the worksite. Both Parties acknowledge that breaks are considered work time and as such cannot be combined or used in conjunction with lunch time or departure time. The Union recognizes that Management may have a need and will exercise the right to assign work during breaks according to the demands of the mission requirements in accordance with 5 USC 7106(a)(2)(B).

B. If an employee cannot take a break because of the workload, break time may not be added as a continuation of the lunch period and shall not be accumulated or used immediately prior to the end of the tour of duty. Management recognizes that the situations when an employee will not be able to take a break because of the workload, this will be rare.

### **Section 5 – Meal Periods**

- A. All employees are required to take a non-paid meal period, scheduled at or near the mid-point of the shift or tour of duty.
- B. A meal period is not required for work periods of less than seven (7) hours per day.
- C. The meal period may not be the first or last 30 minutes of your scheduled shift.

### **Section 6– Clean Up Prior to Leaving Work Area**

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

### **Section 7 – Earning Credit Time**

Normally the earning of credit time must be approved in advance by the employee's supervisor or designee. However, under unusual circumstances and with a working agreement between the supervisor and the Bargaining Unit Employee, credit time may be earned up to one (1) hour without prior approval.

### **Section 8 – Holidays**

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

### **Section 9 – Security Systems**

Security systems are not intended to be used as a time and attendance system. However, cases may arise where the security systems are used to document/validate misconduct or security issues.

**Article 17**  
**OVERTIME (OT) AND CALL BACKS**

**Section 1 – General**

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

**Section 2 – Assignment/Selection for OT**

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

**Section 3 – Notification of Assigned OT**

Management recognizes the importance of effective planning. Bargaining Unit Employees (BUE's) will be provided as much advanced notice as possible when overtime is being assigned. Bargaining Unit Employees designated to work overtime on a day outside the basic workweek will normally be notified no later than the start of the scheduled lunch period one (1) day before the assignment.

**Section 4 – Holiday Schedules**

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

**Section 5 – Reduction of OT**

A. The parties hereby agree to the following with respect to the implementation of the initiative to reduce overtime within AFRS.

B. Managers and employees throughout the AFRS will work together in good faith, to jointly find an acceptable method to reach our common goal of reducing overtime.

**Section 6 – Call Backs**

Employees who are called back to work for a period of overtime unconnected to their regularly scheduled tour of duty are entitled to a minimum of two (2) hours overtime pay. This does not preclude employees from being called in to provide coverage in non-emergency situations.

B. The supervisor or designee may, at the request of an employee, grant compensatory time in lieu of overtime pay, whether such overtime hours are regularly scheduled or irregular or occasional in nature. If the employee does not request compensatory time in lieu of overtime pay, or if the employee's request for compensatory time in lieu of overtime pay is not granted, the employee shall be compensated for such overtime under the applicable statutory provisions.

C. In accordance with regulations, supervisors will not require employees to earn compensatory time in lieu of overtime pay.

D. The Agency shall, to the extent practicable, permit employees to use their compensatory time at the earliest time convenient to them within 26 pay periods.

E. Normally, compensatory time off shall be granted before annual leave is approved. If annual leave would otherwise be forfeited, the annual leave shall be granted before compensatory time. Any employee who is unable to use compensatory time within 26 pay periods shall receive overtime pay instead.

F. Employees directed by their supervisor to work through their non-paid meal period shall be compensated for such time.

#### **Section 7- Basic Overtime Provisions**

A. Overtime pay will be administered consistent with the applicable provisions of Title 5 of U.S. Code, the Fair Labor Standards Act (FLSA), and Government-wide regulations, 5 CFR Part 550 and Part 551. An employee who has performed overtime work is entitled to overtime pay or may elect compensatory time off in lieu of overtime pay, as appropriate. The Agency agrees to provide an employee with as much advance notice as possible when assigning overtime.

B. Management recognizes the importance of effective planning. Bargaining Unit Employees will be provided as much advanced notice as possible when overtime is being assigned.

C. Bargaining Unit Employees designated to work overtime on a day outside the basic workweek will normally be notified no later than the start of the scheduled lunch period one (1) day before the assignment.

**ARTICLE 18**  
**LEAVE**

**Section 1-General**

- A. Employees will accrue and use sick and annual leave in accordance with applicable statutes and OPM regulations. When not specified otherwise, Agency Directives and Policies will be followed.
- B. All leave charges shall be in increments of 15 minutes.
- C. Employees should make requests for leave as far in advance as practical to their immediate supervisor or their designee.
- D. Leave may be requested anytime and will only be denied for valid operational needs.
- E. The Agency may exercise flexibility of work scheduling or numbers of required employees on duty to accommodate an employee's need for emergency or unscheduled leave.
- F. Leave will be administered in a fair and equitable manner.

**Section 2- Leave Earnings**

- A. Full-time and part-time employees earn leave during each full bi-weekly pay period while in a pay status or in a combination of a pay status and a non-pay status in accordance with 5 CFR, Part 630, Absence and Leave.
- B. A full time employee in a Leave Without Pay (LWOP) status that reaches an increment of 80 hours of unpaid leave will not accrue leave within that pay period. The running total of 80 hours will reset each year on pay period one (1).

**Section 3 – Annual Leave**

- A. Annual Leave is provided to allow employees extended leave for rest and recreation and to provide periods of time off for personal and emergency purposes.
- B. The use of accrued annual leave is a right of the employee, subject to the right of the employer to approve when leave may be taken.
- C. The employee will submit a leave request in writing to their immediate supervisor or designee.
- D. Normally, the supervisor or designee will reply to the request for leave in a timely fashion. The employee will be responsible to assure that leave is recorded in their time and attendance record.

E. The supervisor will distribute and update the process for requesting leave (including but not limited to unplanned leave) to all employees on an annual basis.

F. Management will only cancel approved leave for a compelling employer need. Should management cancel leave, the employee will be advised of the cancellation (with rationale) as far in advance as practical.

G. Restored leave will be addressed in accordance with applicable policies and regulations.

H. Employees are advised that the proper leave approving official is their immediate supervisor or their designee.

#### **Section 4 – Unanticipated Annual Leave**

A. If the need for leave cannot be anticipated, the employee shall, as soon as practicable, contact the immediate supervisor or their designee to request approval of unscheduled leave. The employee will follow established work unit notification procedures in the event the immediate supervisor or their designee is not available.

B. In the event an employee has a need for unplanned leave once the schedule has been established/posted the following shall be required:

1. The employee will discuss with the supervisor the need for unanticipated leave; If coverage is needed for the leave, the supervisor will advise the employee of the following:
  - a. The employee will attempt to identify a like qualified employee to perform their assigned duties; the change will not create an overtime situation for either employee. These changes will not be made without supervisory approval; or
  - b. If an employee is unable to find coverage, the employee will meet with their immediate supervisor to explore other possible options; or
  - c. If the employee has not identified an option that has been approved by their supervisor, the leave will be denied and the employee will be required to report as scheduled.

C. If an emergency arises during the employee's duty day, the employee will request leave and obtain approval from his/her immediate supervisor, or their designee, before leaving the work site.

D. Employees who fail to follow leave requesting procedures as required above, may be charged Absent With Out Leave (AWOL).

## **Section 5 – Annual Leave for Union Representatives**

An employee who is a steward or other Union official will be granted annual leave or Leave With Out Pay (LWOP) to attend internal Union functions, during the employee's regular tour of duty, which are not covered by Official Time as set forth in Article 32 Normally, an advanced notice of ten (10) work days will be required and will be approved subject to workload considerations.

## **Section 6 – Sick Leave**

A. Employees are entitled to use sick leave, in accordance with 5 CFR, 630.401, when they:

1. Receive medical, dental, or optical examination or treatment; or
2. Are incapacitated for the performance of duties by sickness, injury, pregnancy, or confinement; or
3. Are required to give care and attendance to an immediate family member who is incapacitated due to a medical or mental health condition.
4. Make arrangements necessitated by the death of a family member or attends the funeral of a family member.
5. Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease.
6. Must be absent from duty for purposes relating to his or her adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

*Note:* Sick leave is also authorized under the provisions of the Federal Employee Family Friendly Leave Act (H.R. 4361). (See Section 11 of this Article)

B. It is the responsibility of an employee who is incapacitated and /or unable to perform their assigned work duties, to notify the immediate supervisor or their designee (or to have any responsible person make the notification for the employee) as soon as possible.

C. Each work unit will establish notification procedures for calling in sick. The procedures will be distributed by management on an annual basis.

D. An employee who expects to be absent more than one day will inform the supervisor or their designee of the expected date of return to duty and notify the supervisor of any change. In the case of extended illness, of more than three (3) consecutive work days, daily reports will not be required.

E. Employees may request temporary modification of their work station or duties for periods as defined in the medical documentation that has been provided. The medical documentation will identify specific restrictions that preclude them from performing full regular duty assignments. Supervisors may provide appropriate limited duty assignments if they are available.

### **Section 7- Documentation for Sick Leave**

A. Employees may be required to furnish administratively acceptable evidence to substantiate a request for approval of sick leave if the sick leave exceeds three (3) consecutive workdays. Exceptions may be made on a case by case basis.

B. An employee requesting annual leave, sick leave, or LWOP for periods of illness of more than 3 consecutive workdays must make an appropriate request and may be required to furnish evidence of the need for sick leave upon return to duty. The agency may place the employee on AWOL pending receipt of the medical certification.

C. An employee may justify the request for sick leave:

1. By medical documentation from the employee's personal physician or health care professional, or
2. For employees who have approved FMLA: An employee with a chronic medical condition that does not require medical treatment but does result in periodic absences from work will not be required to furnish a physician's certificate on a continuing basis if the employee: (1) is absent three (3) days or less, (2) is not on leave restriction and (3) provides, if requested, an updated valid medical certificate not more frequently than every 30 days but at least annually which clearly states the continuing need for the periodic absences.
3. Medical documentation must include a statement that the employee was incapacitated for work and date(s) of incapacitation. This will be considered sufficient for medical documentation purposes. This applies to both sick leave of more than three (3) days and documentation for sick leave restriction(s).

D. Documents regarding employee absence for sick leave purposes are highly sensitive. Management will ensure that they are maintained in a secure and confidential manner.

### **Section 8 – Sick Leave Restriction**

A. Where there is reason to believe that an employee is abusing the sick leave entitlement;

1. The employee shall be formally counseled, provided with written documentation, and advised of the possibility of future medical certification requirements or other actions should the abuse continue. This does not preclude the supervisor from discussing perceived abuse of sick leave.

2. If the abuse continues, the employee may be required to furnish a medical certification for each sick leave application.
3. During the course of the leave restriction and upon serving at least 50% of the time on the restriction, the employee may once per calendar month, request the supervisor evaluate and consider holding in abeyance the remainder of the time to be served on the leave restriction.
4. If the employee fails to maintain the desired improvement during the course of the original time period specified in the leave restriction letter, the supervisor will reinstate the leave restriction letter with an adjusted end date. If the letter of leave restriction is reinstated, there will be no further review during the life of the letter.

### **Section 9 – Advanced Sick Leave**

A. Employees who are incapacitated for the performance of duties because of a serious health condition, disability, or ailment may request advance sick leave not to exceed 240 hours. Two hundred forty hours (240) of sick leave is the maximum number of hours that may be advanced to an employee with a medical emergency related to the adoption of a child, for family care or to care for a family member with a serious health condition. Sick leave will not be advanced just because an employee has exhausted his/her sick leave. The advancing of sick leave is at the discretion of the supervisor.

B. In accordance with policy, (P&P 402.1, Flexible Work Schedules, and its successor), credit hours may be used to liquidate advanced annual or advanced sick leave.

C. Requests for advanced sick leave will be considered in accordance with governing regulations and for periods of absence that will be for more than three (3) consecutive days when all of the following conditions are met:

1. The employee is eligible to earn sick leave;
2. The employee's request does not exceed 240 hours, or for temporary employees only the amount to be earned during the period of temporary employment if appropriate;
3. There is no reason to believe the employee will not return to work after having used the leave;
4. The employee has provided acceptable medical documentation of the need for advanced sick leave.

D. It is agreed that advance leave, including both sick and annual, will be fairly and equitably administered on a case by case basis.

## **Section 10 – Advanced Annual Leave**

A. An employee with an appointment of greater than 90 days or longer, and who is not intermittent, may be advanced annual leave in accordance with their employment appointment and leave will accrue up to the end of the leave year. However, advanced annual leave may not be granted to a temporary employee beyond the date set for the expiration of the employee's temporary appointment or to any employee if there is a likelihood that the employee will retire, be separated, or resign from the Agency before the date the employee will have earned the leave. Upon separation, employees must repay the balance of any remaining advanced annual and sick leave, unless resigning due to exceptions, as listed in regulation or:

1. Death;
2. Disability retirement;
3. Entrance into military service with reemployment rights; or
4. Resignation or separation because of disability which, according to medical certification, prevents the employee from return to or continuing employment.

B. Advance sick leave may be combined with annual leave when necessary to cover one continuous period of absence.

C. It is agreed that advance leave, including both sick and annual, will be fairly and equitably administered on a case by case basis.

D. Denials of requests for advanced annual leave must be conveyed to the employee promptly and must contain a specific explanation of the reasons for the denial.

E. The employee will be required to pay back the advanced annual leave in accordance with current and subsequent regulation, Departmental and Agency policies.

F. In accordance with policy, (P&P 402.1, Flexible Work Schedules, and its successor), credit hours may be used to liquidate advanced annual or advanced sick leave.

## **Section 11 – Leave for Family Purposes**

### **A. Family and Medical Leave Act (FMLA)**

The Agency will adhere to the Government-wide regulations for FMLA.

#### **1. Maternity and Paternity Leave**

- a. Under the Family and Medical Leave Act, bargaining unit employees are entitled to 12 weeks of LWOP during any 12 month period for the following reasons:

- i. Birth of a son or daughter and the care of such son or daughter, and
- ii. Placement of a son or daughter for adoption or foster care.

## 2. Other Family Leave

Under the Family Medical Leave Act (FMLA), bargaining unit employees are entitled to 12 weeks of LWOP during any 12 month period for one or more of the following reasons:

- a. The care of a family member of the employee with a serious health condition. Family member is defined as:
  - i. Spouse, and
  - ii. Sons and daughters,
  - iii. Parents of the employee
- b. A serious health condition of the employee that makes the employee unable to perform the functions of the position of such employee.
- c. Any qualifying exigency arising out of the fact the employee's spouse, son, daughter, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

Note: The employee may elect to substitute annual leave, sick leave for unpaid family or medical leave for any part of the applicable period consistent with governing laws and regulations. Employees may also combine annual leave, sick leave with unpaid family or medical leave for any period of approved leave. An employee may not retroactively substitute paid time off for unpaid family and medical leave.

## B. Family Friendly Leave (FFL)

Under the Federal Employees Family Friendly Leave Act, bargaining unit employees are entitled to use sick leave to provide care for:

1. Spouse, and parents thereof;
2. Children including adopted children, and spouses thereof;
3. Parents;

4. Brothers, sisters, and spouses thereof;
5. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

#### C. Notice of Leave

1. The employee will make an appropriate request for use of FMLA and/or FFL in accordance with Government wide regulation.
2. When the need for unpaid FMLA is foreseeable and the employee fails to give 30 days notice with no reasonable excuse for the delay of notification, the Agency may delay the taking of family and medical unpaid leave until at least 30 days after the date the employee provides notice of his/her need for family and medical leave.

#### D. Medical Certification

An employee shall provide written medical certification to the Agency in a timely manner.

The written medical certification shall include:

1. The date the serious health condition commenced.
2. The probable duration of the serious health condition.
3. The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition including a statement as to the incapacitation, examination, or treatment, and likely duration of condition, may be required.
4. A statement that the employee is unable to perform the functions of his/her position.

The Agency shall not require any personal or confidential information in the written medical certification other than what is required by regulation.

If an agency doubts the validity of medical records it can require a second and third (and final) opinion at the agency's expense (5 USC, 6383).

E. "Health Care Provider" is defined as any of the following individuals:

1. Doctor of Medicine or Osteopathy.
2. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct

sublimation as demonstrated by x-ray to exist) who are authorized to practice by state law.

3. Nurse practitioners and nurse midwives who are authorized to practice by state law or Christian Science practitioners listed with the First Church of Christ Scientist, in Boston, Massachusetts.

If the employee is unable to provide the requested medical certification before leave begins or the Agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the Agency shall grant provisional leave pending final written medical certification.

#### F. Medical Recertification.

The employee may be required to provide an updated certification during the leave period under FMLA,

1. If the medical condition(s) has changed, or
2. The leave is not consistent with the information provided on the medical documentation.

Under these circumstances the employee is responsible for any fees that may be charged.

An employee eligible under the Agency's Family Medical Leave Program may request to participate in the Telework Program.

### **Section 12 – Protection of Employment and Benefits**

A. Upon return from FMLA, the employee will be restored to the same position as he/she occupied before the leave or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

B. When an employee requests leave under the Agency's Family Medical Leave program, the Agency will provide guidance concerning the employee's rights and obligations under the Program.

C. Under FMLA, an employee who meets the criteria for leave and has complied with the requirements under this section may not be denied leave, consistent with all applicable rules governing annual, sick leave, or LWOP as appropriate.

D. An employee enrolled in a health benefits plan, who is placed in a leave without pay status may continue his or her health benefits enrollment while in the LWOP status, but are responsible to arrange through the appropriate channels to pay the contributions into the Employees Health Benefits Fund. The Employer will continue to pay their portion of health and life insurance, if applicable, according to legal and regulatory requirements.

### **Section 13 – Employee Absences for Court or Court-Related Services**

A. Except as otherwise modified by applicable law, government-wide regulations or other outside authority binding on the Agency, an employee summoned or subpoenaed in connection with a judicial proceeding by a court or other authority responsible for the conduct of that proceeding shall be authorized to attend the judicial proceeding without charge to leave or loss of employee salary in the following instances:

1. For jury duty.
2. To appear as a witness on behalf of the Federal, District of Columbia, state, or local government.
3. To appear as a witness on behalf of a private party in an official and job-related capacity or to produce official records.
4. “Expense money” may be retained by the employee; “fees for services rendered” must be submitted to the appropriate financial office.
5. It is agreed that days off and/or schedules will not be changed to avoid granting absence for court or court-related services.

B. An employee who is granted court leave and is excused or released by the court for any day or substantial portion of a day is expected to return to the employee’s regular duties except when:

1. Only a small portion of the work day would be involved and thus no appreciable amount of service would be rendered.
2. The distance from the court to the place of duty is such that this would be an unreasonable requirement.
3. The regular tour of duty occurs at night.

### **Section 14 – Leave With Out Pay (LWOP)**

A. LWOP may be requested and considered for approval in the same manner and for the same purposes as annual leave and sick leave.

B. Employees may request LWOP for educational purposes.

C. LWOP is granted at the discretion of Management. Management does not have the discretion to deny leave in the following cases:

1. When a disabled veteran requests LWOP for medical treatment;

2. When requested by a reservist or National Guard member for military duties in accordance with appropriate military orders. Employees may request such leave after their military leave has been exhausted (38 USC, Section 4316(d));
3. When requested by an employee who has suffered an incapacitating job-related injury or illness and is waiting adjudication of a claim for employee compensation by the Office of Workers' Compensation Program; or
4. When an employee makes a request under the Family and Medical Leave Act and meets the criteria for that program.

D. Upon written request from the appropriate Union office, an employee may be granted leave without pay to engage in Union activities on the national, district, or local level, to work in programs sponsored by the Union or the AFL-CIO. Such requests will be referred to the appropriate Management official. Such employees shall continue to accrue benefits in accordance with applicable OPM regulations. LWOP for this purpose is limited to one (1) year but may be extended or renewed upon proper application.

E. Upon return to duty after a period of LWOP, Management will restore the employee to a similar position at the same grade and pay.

#### **Section 15 – Hazardous Weather/Emergency Conditions**

The Parties agree to use the existing Agency and Local policy on the Hazardous Weather Condition and Closure Notifications. Any changes proposed by Agency and Local will be given to the Union prior to implementation for review and negotiation as appropriate.

#### **Section 16 – Religious Compensatory Time**

A. An employee whose personal religious beliefs require abstention from work during certain periods of time may elect to engage in credit or compensatory time work to compensate for time lost for meeting those religious requirements.

B. To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the agency's mission, the agency shall in each instance, afford the employee the opportunity to work compensatory time. The agency shall in each instance grant compensatory time off to an employee requesting such time off for a specific religious observances and when the employee's personal religious beliefs require that the employee abstain from work.

C. For the purpose stated in paragraph B of this section, the employee may work such compensatory time before or after the granting of compensatory time off. Advanced compensatory time off should be repaid with the appropriate amount of compensatory overtime work within a reasonable amount of time, not to exceed the end of the leave year. Compensatory time shall be credited on an hour-for-hour basis or authorized fractions thereof. Appropriate records will be kept of compensatory time earned and used

D. If the employee is separated or transferred before using the time set aside for a religious observance any hours not used must be paid at the employee's rate of basic pay in effect when the extra hours of work were performed. Any religious compensatory time used and not repaid will be charged to the employee at the same rate.

### **Section 17- Military Leave**

A. In accordance with law and regulations, full-time permanent and part-time permanent employees who are members of the National Guard or the Armed Forces Reserves are entitled to 15 calendar days of regular military leave in a fiscal year for active duty or active duty for training.

B. For part-time employees, military leave is prorated based on the number of hours in the employee's work week.

C. Employees who do not use the entire 15 days can carry any unused military leave (not to exceed 15 days) over to the next fiscal year. Military leave may never exceed 30 days in any one calendar year.

D. Regular military leave is charged in increments of one (1) hour. Non-workdays falling at the beginning or end of military leave are not included in the period of military leave.

E. Management will take into consideration the schedules of employees who work off-tours and will, when possible, arrange schedules to allow such employees to have scheduled days off immediately preceding and following the required military leave.

### **Section 18 – Voluntary Leave Transfer Program**

A. The Agency will continue to use the Leave Transfer program as designated in the current Agency Directives and Policies and as authorized by 5 CFR, 630 Subpart I.

B. Employees are entitled to donate and receive leave for medical emergencies. By reference, the definitions, eligibility criteria and administrative provisions pertaining to a Voluntary Leave Transfer Program contained in 5 CFR, 630 Subpart I are incorporated into this Agreement.

### **Section 19 – Leave for Bereavement**

A. Upon request, subject to any documentation requirements, leave-approving officials shall approve sick leave for employees to mourn the death of the following family members:

1. Spouse and parent's thereof;
2. Children, including adopted children, and spouses thereof;
3. Parents;

4. Brothers and sisters, and spouses thereof; and
5. Any individual related by blood or affinity (including domestic partners) whose close association with the employee is the equivalent of a family relationship.

B. Additional leave (annual, and/or LWOP) can be requested as family care and bereavement needs not covered by sick leave.

C. The supervisor has discretion to require documentation (e.g., obituary, death certificate) prior to final approval of bereavement leave. However, this documentation will normally be required only in unusual circumstances.

### **Section 20 – Administrative Leave**

A. Administrative leave is absence from assigned duties without charge to leave or loss of pay. The parties agree that excused absence may be granted for activities which are in the Government's interest. The employee will be required to have supervisory approval prior to leaving or being absent from the work place.

B. Employees will be granted up to four (4) hours of administrative leave to donate blood. Time spent donating blood and in necessary travel for such purposes shall also be administrative leave.

C. When a donor is paid for donating blood by the blood collecting organization, the employee is required to take some type of leave, other than sick leave, for any period of absence resulting from the blood donation.

D. Upon request, subject to certification by a physician, leave-approving officials shall approve administrative leave for employees who serve as living donors for bone marrow, organ, and tissue donation and transplantation. The use of administrative leave can cover time off for activities such as donor screening, the actual medical procedure, and recovery time. Leave-approving officials shall approve:

1. Employees may use up to seven (7) days of paid leave each calendar year, in addition to annual and sick leave, to serve as a living bone marrow donor;
2. Employees may use up to 30 days of paid leave each year, in addition to annual and sick leave, to serve as an organ donor.

E. The Parties agree that the above reasons for granting administrative leave are not all inclusive and that there may be other situations supporting a request for the granting of such leave. Such requests shall be considered based on the reasons presented at the time; the employer may require documentation as appropriate to support the reasons for and/or the duration of such administrative leave requests.

F. Work place closings not related to weather will be handled in accordance with the current policy on Hazardous Weather Conditions Closure Notifications. (Section 15)

G. Any changes in policy will be subject to notification to the Union and negotiations as required.

**ARTICLE 19**  
**POSITION DESCRIPTIONS (PD's)**

**Section 1 – General**

- A. Each position covered by this Agreement that is established or changed must be accurately described in writing and classified to the proper occupational title, series, bargaining unit status code, and grade.
- B. All position descriptions (PD's) must clearly and concisely state the major and significant duties, responsibilities, and supervisory relationships of the position.
- C. Employees will have access (e.g. e-OPF), to a current, accurate copy of their position description.
- D. PD's will be kept current and accurate, and positions will be classified properly. Management directed changes to a position description will be incorporated in the position description to assure that the position is correctly classified/graded to the proper title, series, and grade. Incidental changes may be made in the form of pen and ink notations on the position description. The Union will be provided copies of, or access to, updated or current position descriptions upon request.
- E. In accordance with regulation, the Agency has the right to assign work that is not in the PD, however, the work needs to be related to the employee's current official position of record. If that work occurs on a regular and reoccurring basis, the PD must be revised to accurately reflect the job duties.
- F. Employees dissatisfied with the classification of their positions should first discuss the problem with their supervisors. If a supervisor is unable to resolve the issue to the employee's satisfaction, the employee can discuss the matter with the local Human Resources staff member who will explain the basis for the classification/job grading.
- G. The Union, upon request, will have access to the evaluation report if available, organizational and functional charts, and other pertinent information directly related to the classification of the position. This informal classification review process should be completed in a reasonable period of time. If the employee is unsatisfied with the outcome of the informal review, the employee may ask the supervisor to forward a request for desk audit to the Agency.
- H. If/when a desk audit is conducted, the desk audit will normally be completed in 60 days from the employee's request. This time frame may be extended by mutual consent.
- I. If the employee still believes there is an inequity, an appeal may be filed with the Agency, Department or Office of Personnel Management (OPM) as appropriate. An employee may file a classification/job grading appeal at any time through appropriate channels whether or not this informal classification review process was followed.

J. Vacant positions will not be posted until the appointing authority assures that they are authorized, properly described, evaluated, and classified according to series, title, and grade.

K. No position(s) will be downgraded without a thorough review. For a downgraded position, the employee's pay and grade will be maintained on an incumbent basis in accordance with law and regulations.

### **Section 2 – Classification Standards**

A. The Agency will apply newly issued OPM classification and job grading standards within a reasonable period of time, or as prescribed by OPM. The Union will be provided with copies of new standards that are implemented at the local level. Current classification standards are available on the OPM website. Management will meet and confer with the Union on procedures pertaining to mandated systematic position classification and special maintenance reviews.

B. Upon request, the Agency will make available to the Union copies of any Agency guidance provided by OPM in connection with any classification standards.

### **Section 3 – Classification Appeals**

A. Upon request, the Agency will make available information to employees and the Union regarding procedures for filing classification appeals through the Agency, Department, or OPM channels upon request.

B. Employees or their Union representatives may submit their written classification/job grading appeals through the designated Human Resources staff. The HR office will forward the complete appeal to the Agency, Department, or OPM as appropriate no later than 15 business days from receipt and will provide the Union with two (2) copies of the employee's appeal request. However, this does not preclude an employee from filing a classification/job grading appeal directly to the Agency, Department, or OPM as appropriate.

C. General Schedule (GS) and Federal Wage Grade (WG) System employees who file written appeals with the Agency, Department, or OPM concerning the title, series and grade; and/or coverage of their position will have their appeal decided within a reasonable period of time from the date the Appeals Office receives a completed application. Classification appeal decisions will be forwarded through the ARS Labor Relations Department to the Local.

### **Section 4 – Effective Date**

The effective date of a personnel action taken as a result of an appeal should be in accordance with the directions provided by the Agency, Department, or OPM decision; normally not later than the beginning of the fourth pay period following the date of the decision.

**ARTICLE 20**  
**DISCIPLINARY AND ADVERSE ACTIONS**

**Section 1 – General**

A. The Agency and the Union recognize that the public interest requires the maintenance of high standards of conduct. The objective of discipline is to correct and improve employee behavior so as to promote the efficiency of the service. Actions based solely upon unacceptable performance should be taken in accordance with Title 5, Chapter 43 and will be covered in Article 22, Performance Appraisal System.

B. The Parties agree to the concept of progressive discipline, when appropriate. Any level of discipline may be bypassed when the nature of the behavior /conduct makes a lesser form of discipline inappropriate.

C. Supervisors are encouraged to use coaching and/or counseling sessions prior to taking disciplinary action.

D. The parties agree to promote the concept of alternative discipline in appropriate circumstances.

**Section 2 – Definitions**

For purposes of this Article, the following general definitions are used:

1. A disciplinary action is defined as official written reprimands, or suspensions of 14 calendar days or less.
2. Adverse actions are defined as removals, suspensions of more than 14 calendar days, reduction in pay or grade or furloughs of 30 calendar days or less.
3. Representative means “Union-designated representative” such as a steward or officer.

**Section 3 - Fairness and Timeliness**

Disciplinary actions must be consistent with applicable laws, regulations, policy, and accepted practice within the Agency. If the Agency believes that disciplinary or adverse action is necessary, such action will be initiated in a timely manner after the Agency has completed an investigation of the alleged misconduct. Discipline will be applied fairly and equitably and will not be used to harass employees.

**Section 4 - Coaching and/or Counseling (Non-Disciplinary Tools)**

A. Prior to taking disciplinary action, supervisors are encouraged to use any of the following as non-disciplinary actions to correct the misconduct:

1. Coaching and/or counseling sessions,

2. Letters of Caution, and
3. Informational and instructional letters or their like.

B. These are not punitive nor are they disciplinary in nature. Rather, these are constructive instruments designed to correct behavior at the lowest possible level.

C. At the discretion of the supervisor, such letters, notations, or records may be maintained by the supervisor in accordance with applicable law, rules, regulation and policy and procedure. Such records will be maintained to show that the employee was "on notice" of expected workplace behavior.

D. Coaching and/or counseling will be conducted privately and in such a manner as to avoid embarrassment to the employee, and to insure that there is no confusion as to the intent of the discussion/meeting.

#### **Section 5 - Alternative Dispute Resolution (ADR)**

A. The Parties recognize the shared interest in correcting behavior promptly and avoiding unnecessary or lengthy litigation. The employee or the Union may request the use of an ADR. However, the Agency retains the right to offer Last Chance Agreements (LCA's), and other forms of alternative resolution.

B. Alternative resolution options, including LCA's, are always voluntary in nature and require mutual agreement between the Agency and the employee prior to being executed. Prior to offering an employee a form of ADR, the Union will be notified and given an opportunity to be present at any meeting in which the employee is offered such an agreement.

#### **Section 6 - Last Chance Agreements**

A. Last Chance Agreements (LCA's) refer to situations in which the Agency agrees to hold in abeyance, an adverse action against an employee in exchange for the employee's agreeing to conform to specific conditions for a set period of time.

The understanding is that if the employee does not meet his or her obligation under the agreement, then the Agency is free to reinstate the adverse action under the terms of the agreement. The Parties recognize that LCA's are the employee's final choice between removal and adhering to the terms of the LCA.

B. The use of LCA's shall be offered at the Agency's discretion consistent with the facts of the case. The employee retains the right to accept or reject the offer of settlement. The Parties recognize that acceptance of the terms of an LCA are entered into voluntarily but are un-retractable upon signature.

C. Prior to offering an employee a LCA, the Union will be notified and given an opportunity to be present at any meeting in which the employee is offered such an agreement.

### **Section 7– Reprimands**

A. Reprimands are effective upon date of issuance to the employee. The reprimand will state the specific reasons for the action. Management agrees that the employee shall be given a reasonable amount of time (up to 2 hours) to review the information provided. At the discretion of the Agency additional time may be granted on a case by case basis.

B. Two (2) copies of the reprimand will be provided to the employee. The employee may provide a copy of the reprimand to the Union. One (1) copy of any document(s) related to the action, will be provided to the requesting party (employee and/or Union) upon request. The parties agree grievance timelines will be preserved until such time as the evidence file has been received.

C. The reprimand will identify the employee's grievance rights, to whom a grievance would be filed, and the time frames for filing the grievance in accordance with the Grievance Procedure, Article 14. The reprimand will also identify the period of time that it will remain in the employee's eOPF. At the conclusion of the retention period, the reprimand will be removed from the employee's eOPF.

### **Section 8 - Suspensions and Adverse Actions**

A. An employee, for whom a suspension of 14 days or less or an adverse action is proposed, is entitled to a 30 calendar day written notice, prior to the effective date of the action, except when the crime provision has been invoked.

B. An employee for whom a suspension or an adverse action is proposed is entitled to a response period of 15 business days.

C. Notices will state specific reasons for the proposed action. One (1) copy of any document(s) related to the action, will be provided to the requesting party (employee and/or Union) upon request.

D. Management agrees that the employee shall be given the opportunity to use a reasonable amount of time (up to 10 hours), to review the evidence on which the notice is based and that is being relied on to support the proposed action. At the discretion of the Agency, additional time may be granted on a case-by-case basis.

E. Two (2) copies of the decision letter will be provided to the employee. The employee may provide a copy of the decision letter to the Union.

F. The employee and/or representative may respond orally and/or in writing as soon as practical but no later than 14 calendar days from receipt of the proposed action notice. The response may

include written statements of the persons having relevant information and/or other appropriate evidence. Extensions for replying to proposed adverse actions and suspensions may be granted when good cause is shown. Requests for extensions shall be submitted in writing.

G. In responding to a proposed disciplinary action, the employee will be entitled to Union representation and will be responsible to secure such representation and to notify the Deciding Official of their election to be represented.

H. The written decision shall include the reason for the disciplinary action and a statement of findings and conclusions as to each charge. The decision shall also include a statement informing the employee that suspensions become part of the permanent record. The letter will also provide the employee's appeal rights and/or grievance rights. The Decision Letter will include the time period for filing a grievance and to whom it must be filed.

### **Section 9 – Investigation of Disciplinary Actions**

A. Management will investigate an incident or situation to determine whether or not discipline is warranted. Weingarten rights will be afforded employees engaged in investigatory interviews in accordance with Article 7.

B. Investigations will be conducted fairly and impartially. The Parties will remind employees of their responsibilities to answer all questions asked during an investigative interview fully and with candor.

### **Section 10 - Removal of Disciplinary Records**

A. Reprimands will be removed from an employee's files after a two (2) year period; unless such action has been extended in writing or a subsequent infraction that referenced the reprimand has occurred.

B. At the election of the issuing management official, reprimands may be removed from the files at any time after one (1) year from the original effective date if the employee's behavior has improved and the discipline has served its purpose. The employee may request that the supervisor issuing the reprimand remove it after one (1) year with the following provisions: a) the employee can demonstrate the behavior has been corrected, and b) only one request may be initiated by the employee.

C. Should the supervisor decide not to remove the reprimand after the employee makes the request for its removal it is understood that this decision is non-grieveable.

D. Suspensions become a permanent part of employee's official eOPF.

**Section 11 - Administrative Reassignment**

Administrative reassignments or demotions may be used when deemed to be the best corrective action. Appropriate procedures must be followed and appeal rights will be provided for decisions of reassignments or demotions made for reasons of misconduct.

**Section 12 - Self Incrimination**

The right of employees not to incriminate themselves will apply in criminal investigations.

## ARTICLE 21 SURVEILLANCE

### General

A. The parties recognize that surveillance is conducted for safety and internal security reasons.

B. This article covers Agency issued equipment; examples include but are not limited to: camera, video, microphone, access card swipes, telephonic, cell phone, computer, and other electronic devices.

C. If the Agency uses covert or hidden surveillance during an investigation; the following shall apply if a disciplinary or adverse action is proposed against an employee represented by the Union:

1. The Union will be given a copy of all relevant evidence collected;
2. The Union will be provided a copy of the pertinent video tapes or other electronic media; and
3. The only exception would be for issues of public safety or national security.
4. The Union will be allowed to represent affected employees in any subsequent discussions or proceedings involving them.

D. The Union is not precluded from any further negotiations on the impact and implementation of covert or hidden surveillance.

E. No electronic recordings may be made without mutual consent except for Inspector General Investigations (OIG), other law enforcement investigations, or EEO investigations.

F. When a recording is made with mutual consent, the employee will be given the opportunity to review the transcript for accuracy and will be provided with a copy of the recording and transcript if one is made. Information obtained in conflict with this Section will not be used as evidence against any employee.

G. Management is to work in conjunction with Personnel and Labor Solutions (PALS) in order ensure appropriate measures are utilized to gather information related to badge access records.

## **ARTICLE 22**

### **PERFORMANCE MANAGEMENT**

#### **Section 1 – Policy**

It is the Agency's policy to operate a performance appraisal program in a manner which is consistent with applicable statutes, regulations, and this Agreement. A written performance plan will be provided to each employee covered by this Agreement at the beginning of each appraisal period (normally within 30 days).

#### **Section 2 - Performance Appraisal Process**

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

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

#### **Section 3 – General**

A. The official appraisal period for which a performance plan must be prepared and monitored, and for which a summary performance rating (rating of record) normally is October 1 through September 30 of each year.

B. The performance rating prepared at the end of an appraisal period is for performance of assigned duties over the entirety of the specified appraisal period.

C. The minimum performance appraisal period is 90 days. If an employee is not on a performance plan for 90 days, the employee cannot be rated.

D. A written performance plan will be provided to each employee within 30 days of the new performance period. The performance plan will contain all of the written performance elements, critical and non-critical elements if used, and their performance standards.

E. The performance plan must be communicated to the employee before the employee may be held accountable. The employee will sign and date the plan to acknowledge they have received their performance plan.

F. Standards established for an employee's position shall be in writing and communicated to the employee when the employee enters a position or when a new standard is established for the

employee's position. Evaluation of performance of standards will be consistent with written procedures.

G. Progress reviews by the supervisor will be conducted during the appraisal period. The supervisor should conduct an interim progress review at the midpoint of the appraisal period to ensure that performance elements and standards are appropriate and to advise the employee of current performance. Supervisors and employees are encouraged to communicate frequently during the appraisal period and discuss any performance concerns that may arise as soon as possible.

H. Normally the immediate supervisor will be responsible for establishing the employee's performance plan, will provide the mid-year progress review, and prepare the final performance appraisal rating (rating of record).

I. Normally, the employee's second-level supervisor will review and approve the performance plan and the final performance appraisal rating (rating of record).

#### **Section 4 - Employee Responsibilities**

All employees are responsible for:

1. Participating in discussions with their supervisor concerning the development of performance elements, standards and measures (optional) and participating in their progress reviews and performance appraisals;
2. Ensuring they familiarize themselves with their position description and performance plan, requesting clarification of expectations if necessary, and requesting information to be able to work towards a rating beyond a fully successful from the supervisor;
3. Taking responsibility to improve their own performance and support team endeavors;
4. Identifying business improvement opportunities and collaborate with peers and supervisors to accomplish them;
5. Seeking performance feedback from their supervisor; and
6. Documenting their performance accomplishments, and being prepared to provide written specific examples of their accomplishments including feedback from internal and external customers, during the performance appraisal discussion.

#### **Section 5 – Agency Responsibilities**

Management is responsible for:

1. New supervisors will receive adequate training in performance management prior to conducting evaluations;

2. Communicating performance expectations clearly, monitoring performance during the appraisal period and providing performance feedback to employees, provide development opportunities as applicable for the employee's current scope of position, and taking appropriate actions to address performance not meeting expectations;
3. Supervisors will provide regular and reoccurring feedback on the quality of performance during the appraisal period. Supervisors will inform employees if their performance drops below the fully successful level;
4. Engaging the employee in the process of establishing and documenting the employee's performance plan;
5. Preparing performance ratings in a timely manner and ensuring equity and consistency in performance ratings; and
6. For providing training when applicable (i.e. technical and/or safety training on equipment, new technologies and changes in procedures).

#### **Section 6 - Rating Performance**

Normally, a written final performance appraisal rating (record of rating) will be issued to each employee by October 30. If a performance cycle has been extended, the supervisor should rate employees within 15 days from the end of the extended cycle.

#### **Section 7 - Unacceptable Performance**

A. If at any time during the performance appraisal period an employee's performance is determined to be unacceptable in one or more critical elements, the supervisor must:

1. Notify the employee of the performance element(s) for which performance is unacceptable; and
2. Inform the employee of the performance requirement(s) or standard(s) that must be attained to demonstrate acceptable performance. The supervisor must inform the employee that unless his/her performance in the critical element(s) improves to and is sustained at an acceptable level, the employee may be reassigned, reduced in grade or removed.

B. Performance Improvement Plans (PIP's): The goal of a PIP is a mutual desire to return the employee to fully successful performance as soon as possible. For each critical performance element in which the employee's performance is unacceptable, the supervisor must afford the employee a reasonable opportunity to demonstrate acceptable performance commensurate with the duties and responsibilities of the employee's position and place the employee on a PIP. The PIP must include:

1. A minimum opportunity period of 60 days to demonstrate acceptable performance; it is understood that the time frame may be extended if additional time is needed;
2. Identify and describe the performance deficiencies in the performance elements and standards for which the employee's performance is at the unacceptable level;
3. Provide clear goals which are appropriate for the responsibilities of the employee's position;
4. Frequent (at a minimum, every two (2) weeks) interaction and feedback with supervisor regarding progress; and
5. Required progress reports will be documented in writing and a copy provided to the employee.

C. If the employee demonstrates an acceptable level of performance during his/her opportunity period, then he/or she is required to maintain an acceptable level of performance for one (1) year from the beginning of the opportunity period.

D. In accordance with 5 CFR 432.105 (a)(2), if the employee does not demonstrate an acceptable level of performance for a critical element during the opportunity period or for one (1) year from the beginning of the opportunity period, the supervisor may initiate a reassignment, reduction in grade, or removal action.

E. The employee will be notified in writing at least five (5) calendar days in advance of the effective date of the Within Grade Increase (WGI) being denied due to unacceptable performance.

### **Section 8 - Temporary Duty Assignments (Details) (TDY) and Temporary Promotions**

A. Performance plans must be provided for details and temporary promotions of 90 days or more. Performance plans will be provided in writing to the employee normally within 15 days of the start of the detail or temporary promotion.

B. The supervisor responsible for the detail or temporary promotion should document the employee's accomplishments at the end of the TDY assignment or detail and forward it to the employee's supervisor for appropriate consideration. The employee's supervisor will give the accomplishments the appropriate consideration, e.g., performance of elements and standards associated with the employee's normal duties versus duties not normally performed.

### **Section 9 - Individual Developmental Plan (IDP)**

As a part of the performance planning process, each employee is encouraged to discuss short- and long-term learning and developmental goals with the supervisor and develop a plan. The plan may include elective training, education, and developmental activities in which employees may engage to improve their knowledge, skills and abilities, and ultimately job performance.

## **ARTICLE 23 AWARDS**

### **Section 1 - General**

The use of monetary and non-monetary awards has been proven to have a significant effect on employee morale, motivation, and performance. Award programs provide recognition based on employee performance, improvement, contributions, and achievements that contribute to the Station's mission. An effective awards program is a tool to reward and motivate employees to continually strive for excellence. The program will be administered in accordance with 5 USC, 2301 Merit Principles.

### **Section 2 – Award/Recognition Guidance**

All Parties agree to comply with the "USDA Guide for Employee Recognition," any other fact sheets or policy and procedures issued by HRD and any policy issued by the Area Office or AFRS, in administering an awards' program for Bargaining Unit Employees. A copy of this guide, fact sheet or policy and procedure may be obtained from the AFRS Administrative Office. The AFRS will fairly recognize and reward individuals and groups for excellence in service to the mission of the organization.

### **Section 3 – Types of Awards**

A. The type of awards by which employees may be recognized, and the awards which employees may be eligible to receive include but are not limited to:

1. **MONETARY:** A cash award granted to an employee as an individual or member of a group, (i.e. Spot, Suggestion, Quality Step Increase (QSI), Performance, Time-off Award, Career Service Award, and Retirement Recognition).
2. **NON-MONETARY:** A letter of appreciation or other appropriate means to recognize contributions that do not meet the standard for cash award or in cases where the contributions do meet the standard but the supervisor chooses not to grant a monetary award, (i.e. Letter of Appreciation, Informal Keepsake Award).
3. **PERFORMANCE AWARDS**
  - a. A performance award is based solely on an employees' performance rating of record assigned at the end of the appraisal period. Monetary amounts associated with performance awards are subjected to budgetary constraints.
  - b. A bargaining unit employee alleging inconsistent application of performance standards and critical elements may pursue the complaint under the negotiated grievance procedure.

B. Award nominations will follow the justification, submission, and approval process as outlined in the Departmental regulation.

## ARTICLE 24 SAFETY AND HEALTH

Maintaining safe and healthful work environments, as a shared value by the Union and Agency, is necessary for the accomplishment of the Agency's mission and contributes to a high quality of life for employees. The Agency will provide and maintain conditions and places of employment that are free from recognized hazards and unhealthful working conditions, consistent with the applicable requirements of 29 USC, 668 *et seq.* (the Occupational Safety and Health Act of 1970), Executive Order 12196, 29 CFR, Part 1960, and guidance from other applicable safety and health standards including the Departmental Safety and Health Manual(s).

The parties agree that bargaining obligations will be fulfilled as necessary based on changes to applicable safety laws, rules, regulations, directives, guidelines, and manuals.

### **Section 1 - General**

- A. On a case-by-case basis, the parties may mutually agree to adopt more stringent safety and health criteria to address specific concerns.
- B. The Agency will continue to publicize safety awareness programs and update the provisions and procedures for elimination of safety and health hazards. The Parties will continue to provide training in various formats such as AgLearn, or its successor, face to face training, video teleconference (VTC), or other training opportunities.
- C. The Agency shall perform continuing analysis of safety incidents and violations to determine causes and appropriate corrective actions concerning patterns of injuries and illnesses.
- D. The results of the analysis will be used to revise existing protocols, and will be taken into consideration when developing new protocols. Training will be provided to employees when protocols are updated or new protocols are introduced.
- E. Upon request the Union Vice President, or designee, will be provided (written) information on illnesses, injuries, and accident trends for development of recommendations to go forward to the appropriate local management.

NOTE: The information will be redacted to preserve Personally Identifiable Information (PII) and Health Insurance Privacy and Portability Act (HIPPA) information accordingly.

- F. There will be no restraint, interference, coercion, discrimination, or reprisal directed against any employee for filing a report of an unsafe or unhealthful working condition or for participating in Occupational Safety and Health Program activities or because of the exercise by an employee on behalf of him/herself or others of any right afforded by Section 19 of the Occupational Safety and Health Act, Executive Order 12196, 29 CFR, Part 1960, or any provision of this Agreement.

## **Section 2 – Appalachian Fruit Research Station (AFRS) Safety Committee (SC)**

A. Union officials serving as standing members of the Committee will be provided Official time in accordance with provisions outlined in Article 32 of this agreement. The Union will be authorized to have one (1) member representative on the AFRS SC mandated by the AFRS Safety Program.

B. Employees who serve on the SC will be coded as “regular duty time” for duties specifically assigned to them as part of the committee and for meeting attendance and preparation.

C. The SC will meet at the Agency’s facilities by mutual agreement depending on circumstances. The parties will agree, the Committee may meet by means of video conferencing or teleconferencing. Additional meetings, as well as alternate meeting sites, may also be arranged as needed.

D. Union Representatives may receive additional training deemed necessary to conduct their duties of the SC and to participate in workplace safety and health inspections. The Union reps will identify the need for the training and work closely with their supervisor to identify the method of training, the location and expected outcome, assuring the most economical methods are used. This mutually agreeable training will be provided by the Agency for Union appointed members of this Committee.

E. All costs for travel and per diem for Union representatives for approved Safety and Health Training will be paid as allowed by applicable law, rule, regulation, and the provisions of this Agreement.

F. Management will provide the results of all documented industrial hygiene testing conducted at the facility to the Union Vice President, or designee. Testing results will continue to be posted on applicable bulletin board.

G. Union participation on the SC is not to be construed as a waiver of the Union’s right to collective bargaining.

H. Management will provide training, contingent upon funding, to interested employees for Cardio-Pulmonary Resuscitation (CPR), Adult First Aid, and AED during duty or non-duty hours.

## **Section 3 - Personal Protective Equipment**

A. Personal Protective Equipment (PPE), as required by appropriate Federal and/or state government (or its subdivisions) standards to protect employees from hazardous conditions encountered during the performance of their official duties, will be provided at no cost to employees required to wear PPE.

B. The Agency agrees to provide cold weather gear as needed, to be able to perform required job duties for work in adverse conditions. This may include polar boots, gloves, winter coveralls, or other non-personal protective gear.

C. With Management's approval, safety shoes shall be supplied every two (2) years or as needed to employees who require safety shoes in the performance of their duties. Safety shoes must meet Federal procurement regulations and meet the safety requirements encountered during the performance of their duties. If shoes are destroyed as a result of official duties, replacements shall be provided.

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

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

F. Assessments to determine the need for PPE will be conducted by the Agency in each work unit/place when: a) there is a substantive change in the protocols or work environment or b) a new protocol will be established.

G. Upon request, the Union Vice President, or designee, will be given copies of all risk assessments, including findings, conclusions, and decisions, and all documents, data, and materials used as a basis for the decision.

H. If the Union disagrees with the determination of PPE requirement, it may seek reconsideration by submitting information or by showing evidence of why PPE should or should not be provided or required, or why the proposed PPE should be modified from the original determination. The Agency will promptly respond to this request for reconsideration with its final determination and supporting reasoning.

I. The Agency will provide information and training on PPE provided to the employee(s).

#### **Section 4 - Unsafe/Unhealthy Conditions**

A. Any employee, group of employees, or Union representative of employees who believes that an unsafe or unhealthful working condition exists in any worksite, has the right to report such condition to any Agency supervisor, manager, Administrative Officer, local Safety Officer, and the Union. An inspection of potentially serious conditions will be made within the timeframe established by applicable regulations. Appropriate testing or sampling may be required as part of the inspection under 29 CFR, 1960.28 (d) (3)).

B. At the conclusion of a review, investigation, or analysis of a potential or imminent safety concern, the reporting employee will be advised that the issue is being addressed, and

if/how/when it has been resolved. This information will also be shared with the Union Vice President or designee.

C. When the Agency or other appropriate authority determines that a dangerous or potentially dangerous condition exists at a worksite, employees at that worksite will be notified as soon as practicable so that precautionary steps can be taken.

D. The Agency shall post a notice of hazardous conditions discovered in worksites as required by applicable laws, rules, and regulations. The notice shall be posted at or near the location of the hazard and shall remain posted until the cited condition has been corrected. Such notices shall contain a warning and description of the unsafe or unhealthful condition and any required precautions to the full extent required by applicable laws, rules, and regulations. Along with the posting, the Agency shall provide notice to the Union Vice President or designee.

E. The Agency shall promptly abate any known unsafe and unhealthful working condition. Further, any equipment, devices, structures, clothing, supplies, tools, or instruments that are found to be unsafe will be removed from service, locked-out, and/or tagged-out or rendered inoperative, as appropriate.

F. If there is an emergency situation in a worksite, the paramount concern is for the preservation of safety and health. Should it become necessary to evacuate an area, the Agency shall take precautions to protect the safety and health of employees. Employees ordinarily will not be readmitted to an evacuated area until it is determined that there is no longer danger to the evacuated personnel.

G. An abatement plan will be prepared if the abatement of an unsafe or unhealthy working condition will not be possible within 30 calendar days. Such plan shall contain a proposed timetable for the abatement and a summary of steps being taken in the interim to protect employees from being injured as a result of the unsafe or unhealthy working conditions and provided to the Union Vice President or designee.

H. The Union Vice President or designee will be notified as soon as practicable and consulted regarding the development and implementation of abatement plans and all personnel subject to the hazard shall be advised of interim measures in effect and shall be kept informed of subsequent progress on the abatement plan.

I. If conditions cannot be immediately corrected, the Agency will make efforts to utilize work at home agreements, reassignments, or other available measures.

J. No employee shall be allowed to work in confined or enclosed spaces without either mechanical or natural ventilation without having someone posted outside equipped with necessary protective equipment to affect a safe rescue.

K. If an employee has safety concerns about their work environment their concerns should be immediately reported to their supervisor. The supervisor will make an assessment as soon as

practicable; the employee has the liberty to elevate their concerns to the next level supervisor in the event the immediate supervisor has failed to respond to the employee's concern.

L. An employee may notify the Union of their safety concern(s). The Union may request additional information as well as information regarding resolution of the safety concern(s).

M. Employees who are directed by the Agency to operate a government vehicle over public roads, highways, or interstate throughways shall not be required or be voluntarily permitted to:

1. Physically operate a vehicle without relief, in excess of any period of ten (10) consecutive hours when doing so is a violation of applicable law, rule, or regulation, except as a practical matter to reach a safe stopping point and in emergencies that pose a threat to human life or property; or
2. Operate overweight, over-length, or over-wide vehicles without proper certification, when doing so is a violation of applicable law, rule, or regulation, except in emergencies that pose a threat to human life or property; or
3. Operate overweight, over-length, or over-wide vehicles without prescribed escort vehicles as required by applicable law, rule or regulation when doing so is a violation of applicable law, rule, or regulation, except in emergencies that pose a threat to human life or property.

N. The Agency shall provide relief or assistance to employees required to lift heavy items, or to operate machinery or equipment requiring exertion beyond safe limits specified in applicable laws, rules, or regulations (20 CFR 416.967, Physical Exertion requirements).

O. Eye hazard areas, equipment, and occupations will be designated by the Agency. Industrial safety glasses, plain or prescription, will be issued at no cost if an individual is working in a designated eye hazardous area or operation.

P. The Agency has the responsibility to provide adequate protections and take measures to reduce the risk and prevent heat-related illnesses and deaths. The Agency will ensure that adequate supplies of potable water are available to employees required to work out of doors in high heat conditions. Employees will be allowed to take extra breaks as necessary.

Q. There will be limited application of carpet glue, HVAC cleaning agents, paint, or other like construction or maintenance chemicals during work hours, when possible, in enclosed spaces occupied by employees.

R. Employees may request a change of duty location during the work process if they reasonably believe that their health or well-being may be affected by the work operations being conducted.

S. The Parties agree that a smoke-free work environment is essential to the health of all BUE's. This will include but is not limited to tobacco, vaping, and e-cigarettes. Management shall

continue to maintain smoking areas that are currently designated for this purpose. The Union will be notified of any changes to these designated areas.

### **Section 5 - Imminent Danger Situations**

A. The term “imminent danger” means any conditions or practices in any workplace which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through normal procedures.

B. An employee may decline his or her assigned task because of reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is an insufficient time to seek effective redress through normal hazard reporting and abatement procedures.

C. Employees will report imminently dangerous situations by the most expeditious means available to any supervisor or manager or safety officer who is immediately available.

D. The Union will be notified immediately by the Agency of all reports of imminent danger situations so that it may provide representation and assistance to employees making reports and given an opportunity to be present during any inspection. Employees and the Union will be told when the imminent danger situation will be inspected. Inspections of imminent danger situations will occur within the timeframe established by applicable regulations.

E. All Agency determinations and actions on imminent danger reports will be put in writing to the reporting employee and the Union explaining the basis for the findings and actions within the timeframe established by applicable regulations (currently with 15 business days from the date the report was made to the Agency if no inspection is to be done or within 15 business days after the completion of an inspection under 29 CFR, 1960.29(d) (4)).

F. If the conditions cannot be immediately corrected, employees will be assigned to work in a safe area.

G. If the supervisor or manager believes the condition or corrected condition does pose an immediate danger, the supervisor or manager shall request an inspection by safety specialists. The Union Vice President or designee shall also be contacted and afforded the opportunity to be present at the time the inspection is made.

H. When the Agency has determined that the imminent danger has been resolved and employees may return to work, supervisors may verbally instruct employees to return to their work area. This will be promptly followed by the supervisor or other management official sending an e-mail or other written document notifying the employee and Union that the situation is now deemed to be corrected and the area is safe. Employees are advised that failure to follow supervisors' instructions may result in disciplinary action.

## **Section 7 - Personal Security**

### **General:**

The Parties recognize that personal/property security and protection are mutual responsibilities of the Agency, Union and employee; each has a role in maintaining a safe/secure working environment. The Agency's internal security practices will be focused on protecting employees' safety and the Federal Government's facilities and property.

A. The Agency shall provide to all BUE's a secure location for storing personal property. Employees are advised that for compelling reasons the Agency may access these locked storage areas. This may include but not limited to: mission requirements, security requirements, safety needs, and facility maintenance requirements.

B. When a secured locker/drawer is accessed when an employee is not present, the employee will be advised that their locker was opened. Normally when a secure locker or drawer is accessed, there will be two (2) individuals present.

C. The Agency shall notify all employees of incidents such as, but not limited to: bomb threats, severe weather, suspicious persons/packages, active shooter, etc., received at or about any facility housing employees as soon as practicable.

D. Employees who report physically threatening situations shall receive appropriate assistance from the Agency.

E. When the Agency becomes aware that an employee in the work place has been subjected to threats, harassment, or other conduct leading to a reasonable fear on the part of the employee for the safety of the employee the Agency shall promptly discuss the matter with the employee and take appropriate action within the scope of applicable regulations and rules.

F. Employees will be provided with emergency numbers during new employee orientation and any emergency response related training. Emergency numbers will be posted prominently throughout the facility.

## **Section 8 -Workplace Violence**

A. Violence constitutes a health and safety hazard in the workplace. Exposure to violence can result in both physical and emotional harm to employees. Although it is the employer's obligation to provide a safe and secure working environment, the Agency and Union agree to work together to prevent workplace violence and to minimize the occurrence and effects of violence in the workplace should it occur.

B. All employees who report harm resulting from an incident of workplace violence shall:

1. Have access to immediate first aid and transportation to the nearest medical facility, as appropriate;

2. Have access to emotional support, including but not limited to traumatic stress debriefing and counseling under the employee assistance program(s); and
3. Be referred to the appropriate Human Resources staff member for information on filing a workers' compensation claim.

### **Section 9 - Emergency Preparedness Plans**

A. Each post of duty for Agency employees shall have access to the Emergency Action Plan that establishes procedures for safeguarding lives in the event of incidents such as: fire, earthquake, bomb threat, tornado, flood or similar natural or man-made emergency.

B. Employees may request specific information on Emergency Plans from the SC.

NOTE: The Emergency Action Plan contains required elements of an occupant emergency plan available on the shared drive.

C. Supervisors shall provide annual refresher training to employees in their immediate work area to keep them current on the requirements of the Emergency Action Plan as it pertains to the employee's work area.

D. Worksite evacuation plans will be posted.

E. The Agency shall ensure that there is an emergency notification system at the worksite that allows immediate notification of employees of emergency situations.

### **Section 10 - Hazardous Materials**

A. The Agency will maintain a current list of all hazardous materials in each location.

B. Employees will be provided initial training on the safe handling and disposal of each hazardous chemical and material used in the worksite. Further training would occur if a change to the initial protocol has been implemented, or upon request. The Agency may include this requirement as part of the employees' performance standards.

### **Section 11 - Ergonomic Review of Work Area**

A. Employees may request an ergonomic review of their work area and duties at any time.

B. Once the ergonomic review has been completed supervisors will review the report with the employee to determine the necessary outcomes. Ergonomic adjustments to the work area and/or equipment may be acquired if deemed necessary.

## **Section 12 - Indoor Air Quality**

A. Employees are entitled to work in an environment containing safe and healthful indoor air quality. The Agency shall provide safe and healthful indoor air quality by conforming to laws, guidelines, regulations, and/or policies issued by Federal regulatory agencies such as OSHA, EPA, and GSA.

B. On-site investigations/inspections will be conducted when a problem concerning indoor air quality or building related illness is formally brought to the agency's attention. These investigations/inspections shall meet the criteria of established government wide rule or regulations including OSHA protocols.

C. The Agency will make reasonable efforts to maintain comfortable indoor work temperatures. Employees who are uncomfortable with those temperatures may suggest and request temporary provisions to assist them in maintaining a comfortable working environment.

## **Section 13 -Wellness Program**

Employee wellness and the investment in programs to maintain employee health, contribute directly to sustained productivity and reduction of lost employee time due to illness. Therefore, the Agency will facilitate and/or encourage programs in such areas as weight reduction, stress reduction and management, nutritional counseling, smoking cessation, prevention of injuries, health screenings, and exercise.

## **Section 14 - Injuries**

Employees who become injured or occupationally ill in the performance of duties shall report the injury or illness to their supervisor as soon as possible. The supervisor will refer the employee to the location Administrative Officer who will advise the employee where and how to obtain treatment and their rights under the Federal Employees' Compensation Act. The Agency and employee shall cooperate in promptly processing all paperwork in connection with compensation claims.

## **Section 17 – Employer Participation**

The Agency currently participates in the ARS Occupational Medical Surveillance Program administered by Federal Occupational Health, a Division of the U.S. Public Health Service.

## **Section 18 – Safety Adherence**

A. The Agency agrees:

1. to obtain and provide to the Union copies of applicable regulations if requested;
2. to make available for review by the Union all safety reports generated by or required by

law, regulation, and/or this Agreement if requested;

3. to assure the provision of safe, potable drinking water to all Unit employees within ready access of working areas.

B. In the event unhealthy or hazardous conditions are identified in a work area, Management will consider closing the Station and/or granting appropriate leave for employees that may be directly impacted.

C. If electrical power to the facility fails during normal business hours (8:00-4:30) and cannot be restored within two (2) hours management will consider closing the station.

D. Management will make a concerted effort to maintain building temperatures between 68-76 F and humidity between 20%-60% in accordance with OSHA published recommendations.

**ARTICLE 25**  
**HAZARDOUS DUTY PAY /ENVIRONMENTAL DIFFERENTIALS**

**A. Environmental Differential**

In accordance with 5 CFR, Part 532, Subpart E, Appendix A, the appropriate environmental differential will be paid to a WG employee who is exposed to an unusually severe hazard, physical hardship, or a working condition meeting the standards described under the categories stated therein.

**B. Hazardous Duty Pay**

1. Pay for irregular or intermittent duty involving physical hardship or hazard for GS employees will be paid in accordance with the provisions of OPM regulations (5 CFR, Part 550, Sub-part I).
2. The parties agree that any physical hardship or hazardous duties must be considered as part of position classification in accordance with OPM classification standards and/or regulation(s). Upon request, the Agency shall inform the employee or Union whether or not such duties were taken into account in establishing the grade of the position and how the duties affected the grade established including whether, absent those duties, the grade would have been lower.

**ARTICLE 26**  
**HAZARDOUS WEATHER**

**Section 1- General**

The Parties agree to use the existing Agency and Local policy on the Hazardous Weather Condition and Closure Notifications. Any changes proposed by Agency and Local will be given to the Union prior to implementation for review and negotiation as appropriate.

**Section 2 – Distribution of Station’s Hazardous Weather Plan**

A copy of the Station's Hazardous Weather Plan will be distributed in its entirety to each employee annually.

## **ARTICLE 27 TRAINING**

### **Section 1 - General Provisions**

A. The Agency and the Union agree that the training and development of employees is of critical importance in carrying out the mission of the Agency. Therefore the Agency will make available to employees the training necessary for the basic performance of the employees' assigned duties.

B. Nothing in this section is intended to interfere with applicable merit promotion or career advancement procedures.

### **Section 2 - Reimbursement of Training Costs**

A. The Agency will pay all approved expenses, including tuition and travel, in connection with training required by the Agency to perform the duties of an employee's current position or a position to which an employee has been assigned, consistent with applicable law, rules, and regulations.

B. When an employee requests elective training, the Agency, upon approval of such training, will reimburse authorized expenses for such training, at a facility the Agency has approved, when the following conditions have been met:

1. The training has been applied for on an SF-182 (or designated form) and approved in advance;
2. Such training is related to the employee's current position, the training will improve the employee's ability to perform his/her current job or a job the employee has been selected to fill through merit promotion;
3. Existing training programs within the Agency will not adequately meet the training need;
4. Establishing a new training program in house to meet the need effectively is not feasible;
5. Reasonable inquiry has failed to disclose the availability of a suitable and adequate program elsewhere in the government; and
6. The approval of such training is in the best interest of the employee and the Agency.

### **Section 3 - Selection for Training**

When there are Agency approved training opportunities, the selection for the training will be made consistent with the needs of the mission, in a fair, equitable, and impartial manner.

### **Section 4 - Reassignments and New Assignments**

When employees are reassigned to new positions or assigned new duties in connection with their current positions, the Agency will provide the training (such as seminars, on the job training, courses, etc.) necessary to enable employees to perform all required duties at the fully successful level.

### **Section 5 - Scheduling Training**

When training requests are approved by management, employees normally will be granted absences from work to attend approved training. Schedule adjustments will be made to accommodate an employee's training or educational program. Training will be completed on duty time.

### **Section 6 - Training Information**

The Agency shall inform employees about required training. This notification shall include training that is required to maintain certifications outlined in the employee's position description, and are required to maintain employment.

### **Section 7 – Notification**

A. Employees will be notified of approval or disapproval of training requests prior to the starting date of the training. If the employee is not selected, the reason for disapproval will be provided upon request.

B. When an employee's request for training is disapproved solely for lack of funds, the employee may resubmit a request for training as funds become available. The Agency will give consideration to resubmitted requests, but may disapprove due to higher training priorities.

### **Section 8 - Awareness Seminars**

Management and the Union recognize the need for periodic awareness seminars pertaining to items such as but not limited to: employee benefits, performance management system, and work place atmosphere.

**ARTICLE 28**  
**AUTHORSHIP**

The Parties recognize that the designation of authorship is an issue of scientific ethics. In recognition of the above the Parties agree that a good faith effort will be made by Management to comply with Research, Education, and Economics (REE), Policies and Procedures (P&P), 152.2-ARS, Authorship of Research and Technical Reports and Publications, dated May 5, 2011.

## **ARTICLE 29 MERIT PROMOTION**

### **Section 1 - Purpose**

The parties agree that merit promotion principles are applied in a consistent manner, with equity to all employees, and without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex, national origin, disabling condition, age, or sexual orientation and shall be based solely on job-related criteria.

### **Section 2 - Actions Covered By Competitive Procedures**

In accordance with 5 CFR, 335.103, competitive procedures will apply to the following types of personnel actions subject to the exceptions explained in Section 3:

1. Promotions;
2. Temporary promotions for more than 120 calendar days;
3. Details over 120 calendar days to higher graded positions or to positions with known promotion potential;
4. Selection for training which is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for a promotion as specified in 5 CFR, 410.302;
5. Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in competitive service. Exceptions are actions permitted by reduction-in-force regulations;
6. Transfer to a higher-grade position or with more promotion potential than a position previously held on a permanent basis in the competitive service; and
7. Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a previously held on a permanent basis in competitive service.

### **Section 3 - Actions not Covered by Competitive Procedures**

In accordance with 5 CFR, 335.104, competitive procedures will not apply to the following personnel actions which are exceptions to Section 2 above:

1. Career Ladder Promotions: Career ladder promotions are permitted when an employee is appointed or assigned to any grade level below the established full performance level

of the position (i.e., the position has a documented career ladder and promotion potential). These promotions may be made non-competitively for any employee who entered the career ladder by:

- a. Competitive procedures;
- b. Competitive appointment from a certificate of eligibles (through OPM or delegated examining authority); and
- c. Non-competitive appointment under special authority; such as conversion of Pathways Program or similar program(s), appointment of former ACTION Volunteers or Peace Corps volunteers, conversion of a Veterans Recruitment Authority (VRA) appointee and Presidential Management Fellows.

2. Promotion Based on Reclassification when:

- a. No significant change occurs in the duties or responsibilities of the position and the position is upgraded due to issuance of a new classification standard, or the correction of a classification error; or
- b. The position is upgraded due to accretion of additional duties and responsibilities and the following provisions are met:
  - i. The duties of the former position are absorbed into the new position;
  - ii. The new position has no promotion potential;
  - iii. The additional duties and responsibilities assigned or accrued by the incumbent do not adversely affect or impact other positions in the organizational unit;
  - iv. The new position is not a reclassification from nonsupervisory to supervisory status; and
  - v. The accretion is supported by a written analysis of the position which may involve a position review including written, face-to-face, and/or telephonic reviews with the employee and/or the employee's supervisor, or other fact gathering method.

3. Permanent Promotion: to a position held under a temporary promotion when:

- a. The assignment was originally made under competitive procedures;
- b. It was known to all competitors at the time of original appointment that the assignment may lead to a permanent position.

4. Temporary Promotion:

- a. Of an employee for less than 120 calendar days;
  - b. promotion for more than 120 calendar days to a grade level previously held on a permanent basis, unless the employee was demoted for reason related to performance or misconduct.
5. Placement as a Result of Priority Consideration: when the referral is a remedy for candidates not given proper consideration in a competitive promotion action.
  6. Reduction in Force Placements: that result in an employee receiving a position with higher promotion potential will not occur unless an employee currently holds or previously held the higher grade on a permanent basis in the competitive service.
  7. Promotion to a Grade Previously Held: on a permanent basis in the competitive service, from which the employee was separated or demoted for other than performance or conduct reasons and not at the employee's request.
  8. Promotion, Reassignment, Demotion, Transfer, Reinstatement, or Detail 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 (or in another merit system with which OPM has an interchange agreement approved under 5 CFR, 6.7 and did not lose because of performance or conduct reasons.
  9. Promotion as a Legal Remedy: as ordered and agreed upon in a legal or administrative proceeding.
  10. Details: for 120 calendar days or less to a higher graded position or to a position with known promotion potential.

**Section 4 - Temporary Promotions**

A. BUE's will not be detailed and/or temporarily promoted to higher graded positions or positions with known promotion potential for more than a cumulative total of 120 calendar days during any 12 month period without the use of competitive procedures.

B. Temporary promotions for qualified and eligible BUE's will take effect on the date requested on the SF 52, or as soon as possible thereafter. Employees must be doing the full scope and performance of the position and be eligible to meet OPM qualifications for temporary promotions. Short term "acting" positions are not considered for temporary promotions.

C. Details to higher grades will not be interrupted for the purpose of avoiding temporary promotions.

D. Temporary promotions for more than 120 calendar days will be advertised and competed in accordance with OPM regulations.

### **Section 5 - Priority Consideration**

A. An employee who would have been referred but was not given proper consideration due to a procedural violation or error in a previous competitive placement action, must be given priority consideration for the next vacancy that the agency elects to fill, in the same series, grade(s), promotion potential, and location as the one for which consideration was lost. This means that the employee must be referred to the selecting official for consideration before using the competitive procedures. If selected on the basis of priority consideration, the employee is promoted or reassigned noncompetitively. If the employee refuses priority consideration, the employee forfeits his/her entitlement to the priority consideration.

B. The selecting official will exercise priority consideration for specific and identified eligible employee(s) prior to selection from a competitive certificate as directed. If applicable, an employee will have received written notification by the authorized Agency official indicating their eligibility of priority consideration. If the eligible employee is not selected, the employee will be given, in writing or by e-mail, the reason for non-selection. Copies of the notice will also be provided to the Union and Human Resources Office.

### **Section 6 - Involuntarily Demoted Employees**

A. Employees who are involuntarily demoted in the Agency without personal cause due to the following events are entitled to consideration for re-promotion before using competitive procedures:

1. An error in the prior classification of a position;
2. A change in classification standards without a change in duties and responsibilities;
3. A change in duties and responsibilities caused by a gradual erosion or by management action; or
4. The application of reduction in force procedures.

B. Grade retention entitlement lasts for a period of two (2) years and applies to positions at the employee's former grade or at any intervening grades that are to be filled under competitive procedures. The right to this consideration does not apply to a position with promotion potential higher than that of the position held at the time of the change to the lower grade.

### **Section 7 - Scope of Competition**

A. Area of consideration for the vacancy will be determined by the Agency and will be broad enough to reach a high quality applicant pool while meeting its obligations under the Agency's Outreach and Diversity objectives.

B. The Agency may consider the use of an area of consideration limited to the local commuting area prior to opening a separate case examining announcement open to all U.S. citizens.

### **Section 8 - Vacancy Announcements**

A. Publication of vacancies will be made through the Government-wide electronic recruitment site; currently [www.usajobs.gov](http://www.usajobs.gov) (or its successor).

B. Notification of amendments, cancellations, or other changes to the vacancy announcement will be accomplished through the government electronic recruitment site.

C. Announcements for BU vacancies will be posted for a minimum of ten (10) calendar days prior to closing date. By mutual agreement the posting period can be adjusted.

D. Vacancy announcements will include:

1. Statement of nondiscrimination;
2. Announcement number and posting and closing dates;
3. Title(s), series and grade(s);
4. Anticipated number of (i.e. multiple) vacancies to be filled;
5. Area of Consideration;
6. Type of test(s) to be used, if any;
7. Description of promotion potential; if any;
8. When using an automated recruitment system, each factor/question used to determine the basic eligibility and/or best-qualified candidates will be included on each announcement;
9. Geographic and organizational location;
10. If relocation expenses will or will not be authorized;
11. Summary of the duties of the position;
12. Summary of eligibility and qualification requirements;

13. Permanent or temporary nature, and, if temporary, the duration and if the promotion may be made permanent;
14. Contact information of the Human Resources staff member relating to the announcement;
15. Special working conditions, such as tour of duty, travel requirements, expected overtime, physical requirements, background investigations, etc.;
16. The different levels at which the position may be filled if it is a multiple-level announcement; and
17. Additional specific information relevant to the evaluation of the candidates, such as writing samples and/or portfolios.

### **Section 9 - Open and Continuous Announcements**

A. Open continuous announcements may be used.

B. An employee may file at any time as outlined on the vacancy announcement for open continuous announcements.

### **Section 10 - Application Process**

A. Employees will follow the requirements for filing an application as outlined in the vacancy announcement.

B. The Parties agree to encourage BUE's to take the initiative to become familiar with the current electronic application process/technology identified at the link above and the associated tools available therein. This will help them set up their profiles, apply for vacancies and to become aware of what they can expect once the application process is initiated.

E. It is the employees' responsibility to be aware of open vacancy announcements and to meet application requirements for each announcement.

F. Employee who are away from their normal duty station for extended periods of time, but are interested in vacancies that may occur are encouraged to:

1. Check their [usajobs@opm.gov](mailto:usajobs@opm.gov) site for vacancy information,

### **Section 11 - Interviewing**

If interviews are used, they must be job-related, reasonably consistent, and fair to all candidates. Also, if interviews are used, candidates will be interviewed if reasonably available in person or by telephone where circumstances warrant.

## **Section 12 - Selection**

A. The selecting official has the right to select or not select any candidates referred. However, the selecting official will give consideration to the candidates' fitness and qualifications, without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex, national origin, non-disqualifying handicapping condition, sexual orientation, or age. The selection shall be based solely on job-related criteria.

B. Upon request, documents relied upon for the selection process will be provided to the Union. Request must be made no later than 30 calendar days from the date of notification of selection/non-selection.

## **Section 14 - Career-Ladder Promotions:**

A. Except as provided below, employees within a career ladder will be promoted to the full performance level as soon as they have:

1. Met the time-in-grade requirements, AND
2. Have successfully met the requirements of the current and the next higher grade in the areas in which they have been provided an opportunity and the work is available to perform.

B. If a supervisor's review leads to the conclusion that the employee's performance does not warrant a promotion or that other factors exist that may delay a promotion, the supervisor will provide notice to the employee during the mid-year performance discussion and annual performance discussion. The discussion will explain where the employee's performance is lacking and advise what the employee must do to qualify for the promotion.

## **Section 15 - Compensation**

An employee's level of compensation upon promotion shall be set in accordance with applicable regulations.

## **Section 16 - Promotion Records for Unit Positions**

In accordance with 5 CFR, 335.103, a file sufficient to allow for reconstruction of the competitive action will be kept for two (2) years, unless there is a grievance or complaint pending on the particular promotion action, in which case the file will be kept pending final decision of the grievance or complaint.

**ARTICLE 30**  
**DUES WITHHOLDING**

Any bargaining unit employee may have dues deducted through payroll deductions. Such deductions will be discontinued only when the employee leaves the unit of recognition, ceases to be a member in good standing of AFGE, or submits a timely revocation form under the procedures of this article.

The allotment of dues through payroll withholding, including the overall procedures and costs for affecting the allotment, shall be subject to and conducted in accordance with the current laws, regulations and Departmental procedures.

## **Article 31 OFFICIAL TIME**

### **Section 1 - Purpose**

The parties recognize that good communications are vital to positive and constructive relationships between the Union and Management. These communications should facilitate and encourage the amicable settlement of disputes between employees and Management involving conditions of employment and should contribute to the effective and efficient conduct of public business. They further recognize that this unit is large and complex and requires Union coordination of its representational activities at several levels. Thus, official time shall be granted in amounts specified by this Agreement or otherwise negotiated for the purpose of:

1. Handling grievances and other complaints;
2. Handling other representational functions; or
3. Engaging in appropriate lobbying functions.

### **Section 2 - Duty-Time Activities**

For the following matters, Union representatives will be on duty time:

1. All activities relating to Partnership/Labor Management Forum (LMF),
2. For cases in which a Union representative is designated as the employee's representative, preparing or presenting appeals to the Merit System Protection Board (MSPB).

NOTE: If a Union representative is chosen by an employee to be a personal representative handling discrimination claims under Equal Employment Opportunity Commission (EEOC) procedures, the personal representative is entitled to official time (29 CFR, 1614 605 (b)). Union official time is not permitted in this capacity.

### **Section 3 - Performance Evaluation**

The use of official time, in accordance with this Agreement, will not adversely affect an employee's performance evaluation.

### **Section 4 - Allegations of Abuse**

Alleged abuses of official time shall be brought to the attention of an appropriate Management official on a timely basis by supervisors and Management officials. The Management official will then discuss the matter with the Local Vice President or District 4 President and/or designee representative as appropriate.

### **Section 5 - Official Time**

- A. The Union will receive total allotment of 40 hours of official time on an annual basis. There will be no banking or rollover of unused hours. The parties agree that the allotment of time can be adjusted by mutual agreement.
- B. The Union Vice President, or designee, will assign and monitor the utilization of official time.
- C. The Union representative will receive prior approval from their immediate supervisor or designee to perform representational duties before leaving the work area.

## **ARTICLE 32 CONTRACTING OUT**

### **Section 1 - General**

A. The Union recognizes Management's right to make determinations with respect to the contracting out of work performed by BUE's under 5 CFR, 7106(a)(2)(B) and Office of Management and Budget (OMB) Circular A-76.

B. Management agrees to give reasonable advance notice to the Union when it determines the need for a commercial activity review under OMB Circular A-76. When Management has decided to contract out work, it will notify the Union and provide to the Union, upon request, that information concerning the decision, which is disclosable under the Freedom of Information Act.

C. The Union and Management recognize the importance of employee participation in any competitive sourcing study that involves BUE's in order to assure the best outcome of the commercial activity study for the employees and the Agency.

### **Section 2 – Notice to Bargain**

Upon receipt of notification of Management's decision to contract out work according to OMB Circular A-76 which is presently being performed by BUE's, the Union may, within 15 calendar days, request negotiations concerning the impact and implementation on BUE's. Negotiations will begin within 30 calendar days of the written request.

**ARTICLE 33**  
**REDUCTION IN FORCE (RIF)**

**Section 1 - Purpose**

A. The Agency and the Union recognizes that unit employees may be seriously and adversely affected by a Reduction in Force (RIF), reorganization, or transfer of function action. The Agency, and the Office of Personnel Management, (OPM) recognizes that attrition, reassignment, furlough, hiring freeze, and early retirements are among the alternatives to RIFs that may be available. This article describes the exclusive procedures the Agency will take in the event of a RIF, reorganization, or transfer of function as defined in this article. It is also intended to protect the interests of employees while allowing the Agency to exercise its rights and duties in carrying out the mission of the Agency.

B. Recognizing the potential disruptive impact that a RIF may generate; the Parties agree to use RIF after careful consideration, and utilization when possible, of less invasive tools such as those described above.

**Section 2 - Definition**

For the purpose of this article, the following terms are defined in law and regulations and are included for informational purposes:

A. Reduction-In-Force (RIF)

When the Agency releases a competing employee from his/her competitive level by furlough for more than 30 calendar days, or of more than 22 discontinuous workdays, separation, demotion, or reassignment requiring displacement when the release is required because of lack of work, shortage of funds, insufficient personnel ceiling, or reorganization, the exercise of reemployment rights or restoration rights, or reclassification of an employee's position due to erosion of duties when such action will take effect after the Agency has formally announced a RIF in the employee's competitive area and when the RIF will take effect within 180 days.

B. Transfer of Function

A transfer of function occurs when a function ceases in one competitive area and moves to one or more competitive areas which do not perform the function at the time of the transfer. Also included, the movement of an entire work operation to another commuting area.

C. Reorganization

Reorganization is the planned elimination, addition, or redistribution of functions or duties of an organization or work unit.

#### D. Competitive Area

An area in which employees compete for retention is known as a Competitive Area. A competitive area must be defined solely in terms of the Agency's organizational units and geographical location; and it must include all employees within the competitive area as defined.

#### E. Competitive Level

The Parties agree that OPM regulations fully define competitive level. Employees are assigned to competitive levels based on their position of record. Positions in a competitive area that are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions. The incumbent of one position can successfully perform the critical elements of any other position upon entry, without any loss of productivity beyond what is normally expected in the orientation of any new but fully qualified employee. (The terms competitive level and retention register generally have the same meaning.)

#### F. Retention Register

The retention register is the ranking of employees in the competitive level after the Agency applies the 4 retention factors. The four (4) retention factors are: tenure of employment, military preference (subject to section 5 CFR, 3501 (a) (3)), length of service, and performance rating. (The terms competitive level and retention register generally have the same meaning.)

#### G. Bump and Retreating

Bumping means the displacing an employee on a different competitive level who is in a lower tenure group, or in a lower subgroup with the released employee's own tenure group.

Retreating means the displacing of an employee on a different competitive level with less service within the released employee's own tenure group and subgroup.

#### H. Identification Method One and Identification Method Two

Under Identification Method One procedure, the losing competitive area identifies an employee with a transferring function if: the employee performs the function during at least half of the employee's work time; or regardless of the amount of time that the employee performs the function, the function includes the duties controlling the employee's grade or rate of pay.

Under Identification Method Two procedure, the losing competitive area identifies for transfer the number of employees it needs to perform the functions. The losing competitive area uses Identification Method Two only to identify positions and employees not covered by Identification Method One.

### **Section 3 - Applicable Laws and Regulations**

For purposes of Title 5 employees, the policy, procedures, and terminology described in this article are to be interpreted in conformance with 5 USC, 3501-3504, 5 CFR Part 351, and other applicable government-wide laws and regulations. Any changes or revisions to the published procedures will be subject to normal notification and negotiation protocols.

### **Section 4 - Application**

The Agency agrees to fairly and equitably apply this article and any laws or regulations relating to any matter in this article.

### **Section 5 - Union Notification**

Management shall be responsible for properly notifying the Union Vice President or designee in conjunction with any of the actions described in this article.

A. For actions covered by this article, the Agency agrees to notify the Union as described below.

1. Management will notify the Union at the earliest possible date, but no later than 90 calendar days prior to the effective date.
2. All notices to the Union will be given in writing prior to any notice to affected unit employees.

B. The notice to the Union under this section shall consist, at a minimum, of the following information:

1. The reason for the action;
2. The approximate number, types, and geographic location of position(s) initially affected; and
3. The approximate date of the action.

### **Section 6 - Freezing of Vacancies**

The Agency will freeze all relevant vacant positions within Kearneysville location, 60 days prior to the effective date of a RIF. The Agency may elect to fill vacancies after the conclusion of the RIF actions initiated during the life of the RIF. When the Agency decides to fill a vacant position after the effective date of the RIF, whether previously frozen by virtue of RIF or in the creation of new vacancies, employees who have been demoted through the application of RIF procedures will be offered the vacancy provided the employee is qualified or has been given a waiver of qualifications for the intended position. Employee entitlement to this special consideration shall be determined in accordance with the Merit Promotion Article 30, of this Collective Bargaining Agreement.

### **Section 7 - Employee Notification**

An individual employee who is adversely affected by actions stated in this article shall be given a specific written notice not less than 60 calendar days prior to the effective date of the action. All such notices shall contain the information required by the OPM regulations in addition to the information required by this article.

### **Section 8 - Content of Employee Notices**

The content of the specific notice shall include the following information:

1. The specific action to be taken;
2. The reason for the action;
3. The effective date of action;
4. The employee's competitive area, competitive level, subgroup and service date, and the three (3) most recent ratings of record received during the last four (4) years;
5. The place where the employee may inspect the regulations and records pertinent to his/her case;
6. Information on reemployment rights (except as permitted by 5 CFR, 351.803 (a)); and
7. The employee's grievance or appeal rights.

### **Section 9 - Employee Information**

The Agency shall provide information and assistance to impacted employees by:

1. Informing all employees of the extent of the affected competitive area, the regulations governing such action, and the kinds of assistance provided to affected employees;
2. Notifying employees of all regular competitive vacancies the Agency wishes to fill by advertising on [USAJobs.gov](http://USAJobs.gov) or its successor.
3. Conducting a placement program within the Agency, in accordance with applicable government wide rules/regulations. The placement program will include counseling for employees by qualified personnel on opportunities and alternatives available to affected employee(s).

### **Section 10 - Personnel Files**

At the written request of an employee, the Union may review any bargaining unit employee's eOPF if the employee believes that the information used to place him/her on the retention register is inaccurate, incomplete, or not in accordance with laws, rules, regulations, and provisions of this article.

### **Section 11 - Records**

A. The Agency will maintain all lists, records, and information pertaining to actions taken under this article for at least 1 year in accordance with applicable rules and regulations after the date it issues a specific reduction in force notice.

B. A copy of the retention register will be made available to the Union at the earliest possible time. In addition, the Union is entitled to see employee requested Agency records that detail their bump and retreat records.

C. An employee who has not received a specific reduction in force notice has no right to review the Agency's retention registers and related records.

### **Section 12 - Employee Use of Authorized Time and Agency Facilities**

A. Employees who are identified for transfer of function or separation as a result of RIF under this article shall be entitled to reasonable amount of duty time, (at least 40 hours) for:

1. Preparing, revising and reproducing job resumes and/or job application forms;
2. Participating in employment interviews;
3. Using the telephone to locate suitable employment; and
4. Reviewing job bulletins, announcement, etc.

B. Such employees will also be entitled to reasonable use of the following facilities and/or services for the purpose of locating suitable employment: telephone, reproduction equipment, interagency messenger mail, email, and counseling (employee assistance program(s)).

### **Section 13 - Performance Appraisals**

Annual performance appraisals for purpose of retention standing will be frozen 30 days prior to the issuance of the notice of action. The three (3) latest annual appraisals of record during the four (4) year period prior to the cut-off date for accepting performance ratings will be used to determine eligibility for additional credit toward an employee's service computation date. To be credited under this section, an appraisal must have been issued to the employee with all appropriate reviews and signatures and must be on record.

**Section 14 - Career Transition Assistance Program and Inter-Agency Career Transition Assistance Program**

A. The Agency will notify employees of the services available under its Career Transition Assistance Program (CTAP) and Inter-Agency Career Transition Assistance Program (ICTAP) and how to obtain them.

B. The Agency will notify eligible employees of their selection priority consideration in USDA and other Federal agencies under the Agency CTAP and ICTAP if they apply and are found to be well qualified.

**Section 15 - Employee Response to Specific Notice**

Upon receipt of specific notice notifying the employee that he/she is offered a reassignment or change to lower grade or will be released from his/her competitive level, the employee shall have seven (7) calendar days in which to accept or reject the offer made. If a position with a higher representative rate or grade (but not higher than the rate or grade of the employee's current position) becomes available on or before the effective date of the RIF, the Agency will make the better offer to the employee. However, making the better offer will not extend the 60 day notice period.

**Section 16 - Displaced Employees**

The Agency shall provide any employee to be separated by RIF or transfer of function with the appropriate contact information regarding unemployment benefits available to them.

**Section 17 - Details**

Employees on detail will not be released during a RIF from the position to which they are detailed but, rather, from the affected employee's permanent position of record.

**Section 18 - Transfer of Function**

This section only applies when a transfer of function is used.

A. When a transfer of function occurs, the Agency will first solicit qualified volunteers for transfer from among those employees in positions that have been identified for transfer only if no competing employee who is identified under Identification Method One or Identification Method Two will be separated or demoted solely because a volunteer transferred to the gaining competitive area. If there are not enough qualified volunteers from among these affected employees, the Agency will solicit qualified volunteers from the competitive area.

B. If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area may give preference to the volunteers with the highest retention standing, or make selections based on other appropriate criteria.

In the event there are not enough volunteers for the transfer, the agency will identify employees for transfer according to Identification Method One and/or Identification Method Two.

C. Whenever possible, affected employees who do not volunteer to be transferred shall be reassigned to vacant positions within the competitive area for which the employee is qualified and which the Agency has determined to fill.

### **Section 19 - Re-promotion Rights of Affected Employees**

For a period of two (2) years from the date of demotion, affected employees demoted by an action covered by this article will be re-promoted to vacancies as they occur according to the following criteria:

1. The Agency determines to fill the vacancy;
2. The employee has the requisite skills and abilities for the position without undue interruption; and,
3. Another qualified employee does not have a higher retention standing.

### **Section 20 - Re-employment Priority Rights of Affected Employees**

A. The Agency will inform employees of their right and responsibility to complete a re-employment application. The Agency will provide the employee with a point of contact for personal assistance with the re-employment application.

B. Career and career-conditional employees, who have received a specific RIF separation notice or a Certificate of Expected Separation and submit a complete Re-employment Priority List (RPL) application to Human Resources, will be entered on the USDA RPL for the commuting area in which they are qualified and available. Agency components must use the RPL in filling vacancies before offering employment to an individual from inside or outside the agency, unless it meets one of the exceptions in 5 CFR, 330.211. Employees may remain on the list for 2 years from the date of RIF separation unless removed earlier based on the occurrence of one of the events in 5 CFR, 330.208

**ARTICLE 34**  
**DURATION**

A. The effective date of this Agreement shall be the date of approval by the Director, Office of Human Resources Management (OHRM), Office of the Secretary of Agriculture, or on the 31<sup>st</sup> day after execution of the agreement, if the Director or designee has neither approved nor disapproved the Agreement.

B. It shall expire five (5) years after the effective date. It will remain in effect for yearly periods thereafter, automatically renewing on the anniversary date of the original effective date unless either party serves written notice of its desire to terminate or modify this Agreement. Written notice will be served no less than 60 calendar days prior to the expiration date and not more than 120 calendar days.

C. Pursuant to section B of this Article, the parties shall meet within 90 calendar days of the receipt of notice to terminate or modify the Agreement. Upon notification the parties agree the Agreement will be extended until the effective date of the modified Agreement.

1. The current agreement shall remain in effect until the new agreement is executed.
2. The parties agree to establish written ground rules for the negotiation process.