Labor Agreement

Between

The American Federation of Government Employees, Miami, Local 514

And

The Miami Immigration Court, Office of the Chief Immigration Judge, Executive Office for Immigration Review, Department of Justice

PREAMBLE

This is an agreement between the American Federation of Government Employees, Local 505 (Union), and the Miami Immigration Court, Office of the Chief Immigration Judge, Executive Office for Immigration Review, U.S. Department of Justice (Employer or Management), collectively hereafter, the Parties.

This Agreement covers all matters relating to the terms and conditions of employment of all Miami Immigration Court bargaining unit employees defined below in Article 1 (covered employees), that were of concern to the Parties herein at the time they entered into this Agreement, and sets forth the entire understanding between the Parties. This Agreement supersedes any and all prior agreements or understandings between the Parties pertaining to the subject matters and any conflicting past practices covered herein. The Parties are now bound by the terms of this Agreement and they mutually agree to honor the letter and spirit of this Agreement.

ARTICLE 1
Representation

The unit to which this Agreement applies is the group of all non-professional employees employed by the Miami Immigration Court (i.e., Legal Assistants and Interpreters), excluding all professional employees; management officials; supervisors; students; temporary and term employees; and employees described in 5 U.S.C. § 7112 (b)(2), (3), (4), (6) and (7).

ARTICLE 2
Provisions of Laws, Regulations, and Past Practices

In the administration of all matters covered by this Agreement, the Parties and covered employees are governed by: existing or future laws, government-wide rules and regulations; existing Employer policies, procedures and practices; and all existing agreements or past practices in effect at the signing of this agreement which are not in conflict with this Agreement, and consistent with the Preamble.

ARTICLE 3
Rights of the Employer

SECTION 1
A. Subject to subsection (B) of this section, nothing in this Agreement shall affect an exercise of authority of any management official under 5 U.S.C. 7106(a).

B. Nothing in this section shall preclude the Parties from negotiating, at the election of the

Employer, matters covered under 5 U.S.C. 7106(b).

SECTION 2
In a dispute over the application of any provision set forth in this Agreement, the position of the Employer will prevail pending resolution of the dispute by means of a negotiated grievance procedure, arbitration, or other appropriate means.

SECTION 3
The above mentioned rights of the Employer are not to be interpreted as being all-inclusive, but merely indicate the type of rights which belong to and are inherent to the Employer. It is understood that any rights the Employer had prior to the signing of this Agreement are retained by the Employer and will be exercised in accordance with this Agreement, where appropriate.

ARTICLE 4
Dissemination of Information

The Employer will provide electronic access for all employees to the Code of Federal Regulations, the U.S. Code, written Agency policies affecting conditions of employment of the bargaining unit (including the OCIJ Operating Policies and Procedures Memoranda), and this Agreement. Employees may print such documents or sections of such documents on Agency printers in accordance with Agency policy.

Information Regarding Bargaining Unit Employees:

Upon request, but not more frequently than once per calendar quarter beginning in January, the Employer will provide to the Union a computer printout of all the Miami Immigration Court employees identified in EOIR's computer system as being in the bargaining unit. The list will include the name, grade, series and title of each individual.

ARTICLE 5
Covered Employee Rights and Responsibilities

SECTION 1
Union Membership: Employees in the unit are protected by the Federal Service Labor-Management Relations Statute in the exercise of their right freely and without fear of penalty or reprisal, to form, join, and assist an employee organization, or to refrain from such activity. This agreement does not prevent an employee, regardless of employee organization membership, from bringing matters of personal concern to the attention of appropriate officials in accordance within applicable laws, regulations, or agency policies, or from choosing his or her own representative in a disciplinary action, grievance, or arbitration. The Employer may disallow as an employee's such designated representative, or any designated representative of the Union, where such an individual's activities as a representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give

rise to unreasonable costs or whose priority work assignments preclude his or her release to undertake representative activities.

Nothing in this agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions. Management shall not discipline or otherwise discriminate against any employee because he or she has filed a complaint or given testimony under the Federal Service Labor-Management Relations Statute. The Union and Management agree that no interference, restraint, coercion, or discrimination will be practiced to encourage or discourage membership in the Union.

SECTION 2
Informing Employees: Management shall take such action consistent with law or regulations, as may be required, in order to inform employees of their rights and obligations, as prescribed in the Federal Service Labor-Management Relations Statute.

SECTION 3

An Exclusive representative of an appropriate unit will be given the opportunity to be represented at :

1. any formal discussion between one or more representatives of the Employer and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

2. any examination of an employee in the unit by a representative of the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee, ("Weingarten Meetings")and such employee requests representation.

3. The Employer will inform the employee of the rights in 2 (above), at least once a year.

4. If an employee requests a representative of the Union during an investigatory interview and one is not immediately available, the Employer may delay the investigation for a reasonable period of time to permit the presence of a Union representative.

SECTION 4
If an employee needs to consult briefly with a Union representative during work hours, the employee must obtain prior permission from their immediate supervisor.

SECTION 5
In the administration of this Agreement, all employees will be treated in a fair and equitable manner, without regard to their education level, position, or grade level.

ARTICLE 6
Employee Personnel Records

SECTION 1
Official Personnel Files of Employees
The Human Resources Office maintains the Official Personnel Files (OPF) for bargaining unit employees.

SECTION 2
Employee Review of Official Personnel File
Employees may request a copy of their OPF from Human Resources once every year. This allows an employee to review the OPF to ensure the file accurately reflects employment history.

ARTICLE 7
Employee Morale

The Parties acknowledge that employee morale is beneficial to the accomplishment and efficiency of court operations; therefore, the Parties will establish a committee to discuss concerns and make recommendations on resolving morale issues.

ARTICLE 8
Employee Orientation

During the Employer's orientation of any new employee(s), the Union will be provided twenty (20) minutes during such orientation to conduct a presentation. The presentation shall not involve a solicitation of union dues or a discussion of internal union business.

ARTICLE 9
Probationary Employees

SECTION 1
The Employer agrees to provide probationary employees with the opportunity to develop and demonstrate their proficiency. During the probationary period, communication between the supervisor and the employee is encouraged.

SECTION 2
When the Employer decides to terminate a bargaining unit employee serving a probationary or trial period because their performance or conduct fails to meet expectations for continued employment, the Employer will terminate the employee's services by notifying the employee in writing, as to why they are being separated and the effective date of the action. The information in the written notice as to why the employee is being terminated will, at a minimum, consist of the Employer's conclusion as to the inadequacies of their performance or conduct.

SECTION 3
When the Employer proposes to terminate a bargaining unit employee serving a probationary or trial period for reasons based in whole or in part on conditions arising before appointment, the notice of proposed action will be in accordance with applicable laws, rules and regulations.

ARTICLE 10
Dues Withholding

SECTION 1
Purpose
Pursuant to 5 U.S.C. § 7115, this agreement establishes procedures under which employees included in the bargaining unit will voluntarily authorize allotment of membership dues to the Union through payroll deductions.

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

SECTION 2
Definitions

Dues: The regular, periodic amount or percentage determined by the Union to be required of the member to maintain a good standing in the Union. This amount or percentage will be certified by the Union on the SF-1187 and excludes special assessments, back dues, fines, and similar items not considered to be dues.

Employee/Labor Relations (ELR) Unit: U. S. Department of Justice, Executive Office for Immigration Review, Office of the General Counsel, Employee/Labor Relations Office, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041 (facsimile: (703) 605 0491).

SF-1187: Standard Form 1187, "Request for Payroll Deductions for Labor Organization Dues."

SF-1188: Standard Form 1188, "Cancellation of Payroll Deductions for Labor Organization Dues."

SECTION 3
Eligible Employees

To be eligible to make voluntary allotment for the payment of Union dues, an employee must:

A. be in the Unit covered by this Agreement; and

B. request the allotment on an SF-1187 that has been certified by the authorized union official.

SECTION 4
Responsibilities of the Union

The Union shall:
A. inform and educate its members on the voluntary nature of the dues allotment program, including conditions governing revocation of allotments;

B. distribute the SF-1187 to its members;

C. certify on the SF-1187 the amount of dues to be withheld each bi-weekly pay period;

D. forward the completed SF-1187s to the ELR Unit;

E. furnish written notification to the ELR Unit, concerning the names and titles of Local Union officials authorized to certify the SF-1187; and

F. provide the ELR Unit with written notification concerning:

1. changes in the amount of Union dues; and

2. the name of any employee who has been expelled or ceases to be a member in good standing in the Union.

SECTION 5
Responsibility of the ELR Unit

The ELR Unit shall:

Upon receipt of a certified SF-1187 from the Union, verify that the employee is or is not in the Unit covered by the Agreement and promptly forward the SF-1187 to the appropriate personnel for processing or return it to the Union with an explanation of its rejection.

The Parties recognize that the National Finance Center (NFC) compiles a report of dues withheld from employee paychecks. NFC normally makes this report available on a bi-weekly basis. The Employer's Human Resources Office agrees to use best efforts to ensure that this report is provided to the Union, and the Union agrees to cooperate by ensuring that information provided to the NFC for the Union is accurate such as the name of the individual to whom the report should be sent.

SECTION 6
Procedures

It is agreed that the following procedures will govern the voluntary allotment of dues:

A. Withholding of Dues:

1. Upon receipt of a certified SF-1187 from the Union, the ELR Unit will review and, if valid (e.g., the authorizing union official's signature), forward the SF-1187 to the appropriate personnel. Valid allotments will be forwarded to Human Resources and will be effected as soon as administratively possible, usually at the beginning of the first pay period following receipt of the form.

2. If an employee is in a non-pay status for an entire biweekly pay period or if an employee's net pay is insufficient to cover the minimum dues amount, no deductions will be made. No retroactive withholding will be made for pay periods in which the employee's net pay is insufficient to cover the minimum dues amount.

B. Changes in Dues:

1. The amount or percentage of dues certified on the original SF-1187 will remain unchanged until an authorized Union official provides written certification to the ELR Unit that the amount or percentage of dues has changed. New SF-1187s will not be required.

2. Changes in the amount of the allotment due to changes in the amount of Union dues will not be made more than once in any twelve-month period.

C. Termination of Allotments:

Allotments by employees will be terminated as follows:

1. Automatically:

a. upon loss of exclusive recognition by the Union;

b. when an employee ceases to be eligible for inclusion in the Unit covered by this Agreement; and

c. when an employee is expelled or ceases to be a member in good standing of the Union.

2. Voluntarily:

An employee may submit a written request, SF-1188, to the ELR Unit at any time. As provided in 5 U. S.C. § 7115(a), no allotment may be revoked for a period of one year. A revocation received on or before the first anniversary of the date the employee authorized withholding will be effective the first pay period that begins on or after the anniversary date.

ARTICLE 11

Official Time

SECTION 1
Recognition of Designated Union Officers, Including Stewards

The Employer agrees to recognize Union representatives to be designated by the Union. Within fifteen (15) days of the execution of this Agreement, the Union will provide the Employer with a list of the names of each of its designated Union representatives. The Union shall provide an updated list to the Employer within ten (10) workdays of any change of designated representative(s).

SECTION 2
Representational Activities Covered by Official Time

Unless official time has been authorized by law or this Agreement, and approved according to procedures outlined in this Article, representational activity will be performed on the non-duty time of the employees involved. Duly recognized officers of the Union may be granted official time, if in an official duty status, and as otherwise subject to the limitations of this Article, to engage in the following representational activities for bargaining unit employees:

(1) Consultation with bargaining unit employees;
(2) Preparation and presentation for Informal grievances;
(3) Preparation and presentation for Formal grievances;
(4) Arbitration preparation if presenting the case before the arbitrator;
(5) Arbitration hearings;
(6) Formal discussions;
(7) Weingarten meetings;
(8) Unfair labor practice charges, (including, but not limited to, preparation, filing and litigating);
(9) Preparation and communication with the Employer on matters covered by this Agreement;
(10) Representational activities related to proposed disciplinary, adverse action, or performance-based actions; and
(11) Preparation and communication with the Employer regarding representational activities not otherwise specified herein.
(12) Labor Relations Training

Official time includes time spent on the telephone. Official time for collective bargaining agreement negotiations will be negotiated separately and is not covered above.

SECTION 3
Scheduling of Official Time

In as far advance as reasonably possible, the union representative seeking to use official time must request the official time in writing from his/her immediate supervisor or his/her designee on a

form OPM-71. Such request must state the date for which the official time is requested, the anticipated amount of official time to be used, the purpose for which the official time is requested, and the payroll code (see appendix) which best describes the activity. A request complying with the terms of this Agreement will normally be approved, based upon workload and court schedules. All grants and denials of official time will be in writing. If the request is approved, upon completion of the authorized activity, the union representative will advise his/her immediate supervisor or designee, in writing, as to the date and time of his or her return to duty and the total number of hours used. If the number of hours is different than originally requested, a second OPM-71 must be submitted by the representative.

SECTION 4
Limitations on Official Time

The Union recognizes its responsibility to ensure that Union representatives do not abuse their authority by unduly absenting themselves from their assigned work. The Union agrees that in the interest of efficient government, all efforts will be made to use approved time efficiently, and that the effect on the work schedule of the Union representative's office/unit is a factor in the decision as to when official time may be authorized. Generally, the one employee who will serve as a representative in a particular case or complaint at any one time, may request official time. The supervisor, or designee, shall propose an alternative time in those instances in which requested official time is denied.

Official time granted under this article may not be used for internal union business (such as, but not limited to, solicitation of membership, elections of union officials, and collection of dues).

The Employer is under no obligation to pay Union representatives for representational time spent when they are not scheduled to work. No overtime or premium pay is payable for the purpose of representational activities.

Absent-without-leave (AWOL) charges may accrue to the time and attendance record of any Union representative who fails to follow the procedures set forth in this Article for requesting official time (e.g., requesting official time after having engaged in one or more of the representational activities set forth in Section 2, above). AWOL charges may lead to disciplinary action.

SECTION 5
Abuse of Official Time

In those instances in which a Union representative's use of official time does not comply with the provisions of this Agreement, the Employer may initially choose to discuss the matter with the Union representative to find a satisfactory solution. Abuse of official time could lead to disciplinary action.

SECTION 6
Miscellaneous

There shall be no restraint, interference, coercion, or discrimination against Union representatives because of the performance of their approved official representational duties. A Union representative shall not use official time in his or her position as a Union representative for matters outside the scope authorized by this Agreement and will conduct his or her approved business promptly. Union representatives may receive, but not solicit, complaints and/or grievances of employees on official or duty time. Agency staff, equipment, or property will be used in conjunction with or as a result of representational function only as provided in this Agreement.

SECTION 7
Official Time Bank

The Union shall be allotted 150 hours, annually, for official time for all representational activities, as may be granted in accordance with the requirements of this Article. This "bank of time" shall cover a 12-month period, and shall commence with the date of the signing of this Agreement. Any of the allotted official time remaining at the end of each anniversary year shall be forfeited. The Employer agrees that, upon reaching a remaining balance of 25 hours, the Union may reopen Section 7 of this Article to negotiate regarding an additional number of hours for the remainder of the 12 month period.

SECTION 8
Official Time for Training

Union representatives will be authorized an aggregate of 40 hours of excused absence annually, commencing with the date of the signing of this Agreement, to attend labor relations training of mutual benefit to the Employer and the Union. Requests will be submitted by the Union president to his or her immediate supervisor at least two (2) work weeks in advance of the requested training. Requests to the Employer will be in writing and include an official copy of the agenda and description of the training, and a written statement of how the training will be mutually beneficial to the Parties. All other costs related to training permitted under this Section will be borne exclusively by the Union. Any of the allotted official time remaining at the end of each anniversary year shall be forfeited. The Employer may consider requests for additional time under this Section, but it is under no legal or contractual obligation to grant additional time.

ARTICLE 12
Union Space and Equipment

SECTION 1
Facilities

Designated Union representatives may use their normally assigned work space, computer, printer and telephone at no cost for representational duties as described in this Agreement. The Employer will also provide the Union with reasonable access to a fax machine and copier to be used for representational purposes (copies are not to exceed 50 copies (i.e. pages) per week); a distribution box in the Agency's mailroom designated "AFGE Union;" and a lockable filing cabinet. Representational functions do not include the conduct of internal Union business.

With at least one week prior approval from management, the union officers may use the training room for purposes defined under this article. Should the room become unavailable within the week, management will make a good faith effort to find another room.

SECTION 2
Meetings

The Union will be provided reasonable access to space suitable for private calls and/or meetings as needed for representational activities. Upon advance request, the Employer will also provide the use of a training room for the union to conduct union meetings during lunch periods and other reasonable non-duty hours for internal Union activities, subject to operational and security needs. The Employer also agrees to provide the Union with space on the bulletin board in all four break rooms for the union's use. The union will have one half of the bulletin board reserved for its use.

SECTION 3
Proper Use of Facilities and Services

Under applicable laws, regulations, and policies, Union representatives are responsible for ensuring that the items listed above will be used only for official use and authorized purpose, and will not be put to uses that would reflect adversely on the Employer.

ARTICLE 13
Grievance Procedures

Section 1. Purpose

The purpose of this Article is to establish a procedure for the prompt and equitable settlement of grievances.

Section 2. Exclusivity of Procedure; Election

The grievance procedures set forth in this Article will constitute the sole remedy for bargaining unit employees who seek redress on subject matters defined as grievances under Section 3 of this Article, except that such employees may elect between this procedure or another statutory procedure, but not both, if a subject matter is covered by a statutory procedure. Subject matters not covered by this Article that fall within the scope of the Agency Grievance Procedures may be

grieved under those procedures.

Section 3. Definition

A grievance is defined as any complaint by: (a) any bargaining unit employee concerning any matter not otherwise excluded under Section 4 of this Article, relating to the employment of the employee; (b) the Union concerning any matter not otherwise excluded under Section 4 of this Article, relating to the employment of any bargaining unit employee; or (c) the Union or the Employer, or any bargaining unit employee, concerning the effect or interpretation, or a claim of breach of this Agreement, or any claimed violation, misinterpretation or misapplication of any law, rule, or regulation affecting conditions of employment, except as excluded under Section 4 of this Article.

Section 4. Exclusions

The following matters are specifically and expressly excluded from the grievance procedures of this Article:

a. An alleged violation relating to prohibited political activities under 5 U.S.C. §§ 7321 through 7326;

b. Retirement, life insurance, or health insurance;

c. A suspension or removal for national security reasons under 5 U.S.C. § 7532, and removals under 5 U.S.C. Chapter 75;

d. Any examination, certification or appointment;

e. The classification of any position that does not result in the reduction-in-grade or pay of an employee;

f. Non-selection for promotion from a group of properly ranked and certified candidates, unless the complaint alleges pre-selection or that a pattern of discrimination exists;

g. An action terminating a temporary promotion;

h. The discharge or termination of a probationary or temporary employee; and

i. Allegations of prohibited personnel practices under 5 U.S.C. § 2302.

Section 5. Requirements for All Grievances

All grievances filed under this Agreement must be in writing and include the following:

a. A narrative setting forth the issue or occurrence which gives rise to the grievance;

b. If appropriate, the provision(s) of law, regulation(s), or specific section of this Agreement which allegedly has been misinterpreted, misapplied, or violated, and the date on which such violation is alleged to have occurred;

c. The identity of the individual(s) alleged to have committed the violation;

d. Any relevant evidence or information, including written presentations of the facts;

e. A detailed statement of the remedy sought;

f. Whether a meeting is requested on the grievance;

g. The name of the grievant, and the name and telephone number of the grievant's representative, if applicable; and

h. A narrative summarizing the informal resolution ("Step 1") on the subject matter, under the grievance procedure described in Section 6, subsection a), of this Article.

Section 6. Employee Grievance Procedures

a) Step 1 - Informal Grievance Procedures.

A. The aggrieved employee(s) and/or designated representative must submit an informal grievance to the Court Administrator, or his or her designee, no later than fifteen (15) days from the employee receiving notice of an action, or the actual occurrence of the incident or the employee's having knowledge of the incident (whichever occurs first).

B. The informal grievance must be in writing, subject to the requirements of Section 5 of this Article, and must be delivered in-person or by e-mail.

C. If a meeting is requested, it will be held as soon as possible but no later than ten (10) business days from receipt of the informal grievance.

D. The Court Administrator or his or her designee will render a written decision on the informal grievance, within ten (10) business days of the meeting, or within ten (10) business days of receipt of such grievance if no meeting is requested.

b) Step 2 - Formal Grievance Procedures.

A. After exhausting the Step 1, Informal Grievance Procedures, a grievant may elect to pursue a formal grievance under Step 2 of this subsection.

B. A formal grievance must be submitted by the employee and/or designated representative, no later than seven (7) days after the informal decision has been received.

C. A formal grievance must be submitted to the Assistant Chief Immigration Judge (ACIJ) with responsibility for the Miami Immigration Court, with a copy faxed simultaneously to the Agency's Employee/Labor Relations Unit at (703) 605-0491 (or other fax number designated by the Employer, with notice to the Union).

D. The formal grievance must be in writing, subject to the requirements of Section 5 of this Article, and must be delivered in-person or by e-mail.

E. If a meeting is requested, it will generally take place within ten (10) business days of submitting the formal grievance to the responsible ACIJ. Meetings may be held in-person, and/or by video conference or teleconference, at the sole discretion of the Employer.

F. A written decision will be issued within thirty (30) days of the meeting or, if no meeting is held, within thirty (30) days of the filing of the formal grievance. The written decision will address whether the subject matter of the grievance was grievable, if that subject is at issue. A copy of the decision will be provided to the Union.

Section 7. Employer and Union Grievances

A. Any grievance by the Employer or the Union, in its institutional capacity, must be filed within thirty (30) days of the moving party having notice of the action, or the actual occurrence of the incident, or the moving party having knowledge of the incident (whichever occurs first).

B. Grievances filed by the Employer must be submitted to the Union President. Grievances filed by the Union will be submitted to the ACIJ with responsibility for the Miami Immigration Court, with a courtesy copy faxed simultaneously to the Employee/Labor Relations Unit at (703) 605-0491 (or other fax number designated by the Employer, with notice to the Union).

C. A grievance by the Employer or Union must be in writing, subject to the requirements of Section 5 of this Article, and must be delivered in-person or by e-mail.

D. If a meeting is requested by the grievant, it will generally take place within fifteen (15) business days of receipt of the grievance. Meetings may be held in-person, and/or by video conference or teleconference.

E. The non-moving party shall issue a decision within thirty (30) days of the meeting or, if no meeting is requested, within thirty (30) days of receipt of the grievance. The written decision will address whether the subject matter of the grievance was grievable, if that subject is at issue.

Section 8. Invoking Arbitration

Only the Employer or the Union may advance a grievance to arbitration. Arbitration must be invoked under the procedures detailed in Article 14.

Section 9. Union Representation

An employee grievant has the right to be accompanied, represented, and/or advised by the Union under the grievance procedures of this Article. The Union has the right to be present at any formal discussions between the Employer and a grievant concerning any grievance under this Article.

Section 10. Extension of Time Limits, Calculation of Time Frames, and Filing Dates

a) Any time limits may be extended upon written, mutual agreement of the Parties, provided that a request to extend is presented before the end of a prescribed time limit.

b) All time frames included in this Article are calendar days, unless otherwise indicated. If a deadline under this Article falls on a weekend or Federal holiday, or work-place wide closure, then the following business day is the deadline.

c) A document will be considered filed or submitted on the date that it is postmarked, faxed, e-mailed, or sent by commercial carrier. In the case of personal delivery, the date filed will be the date of delivery to the intended recipient. When documents are filed by mail or commercial carrier, a courtesy copy should normally be provided by e-mail.

ARTICLE 14
Arbitration

Section 1. Applicability

a) Subject Matters Covered; Exclusivity. Only subject matters defined as grievances under section 3 of Article 13 of the Parties' collective bargaining agreement, and that have been subject to formal grievance resolution procedures (i.e., under "Step 2" grievance procedures), may be advanced to arbitration in accordance with this article.

b) Who May Invoke. Only the Union or the Agency may invoke arbitration under this article. The Union official invoking arbitration must either be its Local President, or an official specifically designated by its President to make such an invocation, provided that such specific designation must be received by the Agency at or before the time of service of such invocation.

c) Notice of Invocation of Arbitration; Service.

A. To invoke arbitration, the Union must serve notice on the Assistant Chief Immigration Judge with responsibility over the Miami Immigration Court, with a courtesy copy faxed simultaneously to the Agency's Employee and Labor Relations office at (703) 605-0491 (or other fax number designated by the Employer, with notice to the Union). To invoke arbitration, the Agency must serve notice on the Local President of the Union.

B. Notice, Manner of Service. When hand-delivered, the invocation notice must be accompanied by a written proof of service that contains the information indicated in, and that has the same format as, the certificate of service appended herein (Appendix XX to this Agreement). When mailed (or sent by an equivalent such as a courier service, e.g., FedEx), the invocation notice must be received in an envelope with a U.S. Postal Service Postmark (or equivalent courier transmittal document or cover-sheet). The U.S. Postal Service Postmark (or equivalent) will be used to determine the date of invocation. When transmitted by electronic mail, the invocation notice must be sent no later than midnight (EST), on the fifteenth (15th) calendar day from the date of service of the grievance decision issued pursuant to Article 13.

d) Time to Invoke. Any notice to invoke arbitration must be in writing and served on the other Party no later than fifteen (15) calendar days from the date of service of the formal resolution of a grievance pursuant to Article 13 (i.e., under "Step 2"grievance procedures). If the arbitration invocation is withdrawn, or if any deadlines or procedures set forth in this article have not been satisfied, the formal resolution of a grievance will be final, without further redress or remedy under this article.

Section 2. Arbitrator Selection

a) Time Limit to Submit Panel Request, Form R-43. Within seven (7) calendar days from invoking arbitration, the Party that invoked arbitration shall request a panel of seven (7) impartial arbitrators from the Federal Mediation and Conciliation Service (FMCS), by submitting a properly completed FMCS Form R-43 (entitled "Request for Arbitration Panel"), together with a complete copy of the submission to the other Party, and fully and solely pay any attendant arbitration panel request fees or costs required by FMCS. Using Form R-43, such Party shall specifically request arbitrators with Federal sector employment experience (as an industry specialization), located within a 150 mile radius of the Miami Immigration Court. Within fourteen (14) calendar days from receiving a list of arbitrators from FMCS, the Parties shall select an arbitrator.

A. Copies of all correspondence to FMCS shall be served simultaneously on the opposing Party, consistent with the manner of service set forth in Section 1(c)(B) of this article. With respect to such correspondence originated by the Union, service must be directed to the Assistant Chief Immigration Judge with responsibility over the Miami Immigration Court, with a courtesy copy faxed simultaneously to the Agency's Employee and Labor Relations office at (703) 605-0491 (or other fax number designated by the Employer, with notice to the Union).
With respect to such correspondence originated by the Agency, service must be directed to the Local President of the Union.

b) Arbitrator Selection. If the Parties cannot agree upon an arbitrator, the Parties shall each strike one (1) name from the panel alternately, until only one arbitrator name remains from the list, who shall be designated the arbitrator. In each instance of arbitrator selection, the Party striking the first name from the panel shall be chosen by a coin toss, provided that when selection is undertaken by telephone, the moving Party strikes first. At any time prior to an arbitrator designation, the Parties may agree to obtain a new panel of arbitrators from the FMCS.

c) Expiration of Time to Select Arbitrator. If an arbitrator is not selected within thirty (30) calendar days from the receipt of the FMCS list, the matter shall be deemed withdrawn with prejudice, unless otherwise mutually agreed by the Parties, for good cause shown (e.g., serious illness or accident).

d) FMCS Arbitrator Designation. At the request of a Party, the FMCS shall be empowered to directly designate an arbitrator from a requested panel to hear a case in the event that:

A. Either Party refuses to participate in the selection of an arbitrator; or

B. Either Party fails to act where obligated, or causes undue delay in selecting an arbitrator under this article.

e) Scheduling Hearing. Within seven (7) calendar days of selection, the arbitrator shall be initially contacted by the Parties to schedule a hearing date. If a hearing is not held within ninety (90) calendar days of an arbitrator's selection, the matter shall be deemed withdrawn with prejudice, unless otherwise mutually agreed by the Parties, or for good cause shown (e.g., serious illness or accident).

f) Copy of Agreement to Arbitrator. The moving Party shall provide the arbitrator with a copy of this agreement at the time of the initial contact referenced in Section 2e above.

g) Arbitrator Bound by the Agreement. The Parties agree that any arbitrator selected under this Article shall be bound by, and serve in accordance with, all terms set forth herein.

Section 3. Pre-Hearing Matters

a) Joint Submission. The Parties shall communicate in advance of the arbitration hearing in an attempt to agree on a joint submission of the issue(s) for arbitration. If the Parties fail to agree on a joint submission, each Party will prepare a statement of what it believes the issue(s) to be. The arbitrator will have the final authority to determine the issue(s) to be decided, consistent with section 6 of this article.

b) Witness Lists. The Parties shall exchange proposed witness lists at least fourteen (14) days in advance of the hearing that will include a narrative for each such witness indicating the

nature of their testimony (e.g., direct observation of an incident, knowledge of bargaining history, etc.). Disputes about proposed witnesses (e.g., relevance or redundancy of proposed testimony, or any disqualifying reason, including failure to designate a witness in accordance with this provision) will be resolved by the arbitrator during a scheduled telephonic prehearing conference. The arbitrator must approve any proposed witness for testimony no later than five (5) calendar days in advance of the hearing.

c) Witness Status. The grievant and any employees approved as witnesses by the arbitrator will be excused from the performance of their normal duties to the extent necessary to participate in the arbitration proceedings and during such times these employees shall continue in a pay status.

d) Withdrawal. The Union shall have full authority to settle, withdraw or otherwise dispose of any grievance brought on behalf of the Union and/or on the behalf of employees. An agreement by the Parties to settle, withdraw, or otherwise dispose of a grievance appealed to arbitration shall be binding upon the grievant(s).

e) Official Time; Representation. The Union may be represented by one (1) person on official time. The Agency's obligation to provide official time is limited to bargaining unit employees. The Union is obligated to notify the Agency in writing, no less than ten (10) calendar days prior to the hearing of the name(s) of its representative(s) and in the case of non-bargaining unit employees, provide contact information including name, firm, if applicable, street address and email address.

f) Other. Issues of grievability and arbitrability shall be resolved as specified in Section 4, below.

Section 4. Issues of Grievability or Arbitrability

a) Grievability/Arbitrability. Unless already raised under "Step 2" grievance procedures, a Party raising an issue of grievability or arbitrability must, within five (5) calendar days of serving notice of invocation of arbitration on the other Party as set forth in Section 1 of this article, request a separate hearing to decide such issue(s), to be convened prior to any arbitration hearing on the merits of the original grievance. In that case, the entire cost of the grievability or arbitrability hearing will be borne by the losing Party (i.e., the Party that does not prevail at such a hearing).

b) Grievability/Arbitrability v. Merits. The arbitrability or grievability hearing shall be conducted independent of the merits of the original grievance, by a separate arbitrator selected for that unique purpose, in accordance with the provisions of Section 2 of this Article, and as otherwise provided in the foregoing paragraphs of this Article.

c) Grievability/Arbitrability v. Merits; Selection of Arbitrators. When a Party properly raises

an issue of grievability or arbitrability in accordance with this section, the Parties shall select two arbitrators under the selection procedures agreed upon in Section 2 of this Article; the first selectee shall decide grievability or arbitrability issues. If the matter is determined to be grievable or arbitrable, the second arbitrator shall be notified by the moving Party, and a merits hearing shall otherwise proceed, consistent with the standards and procedures set forth in this Article.

Section 5. Arbitrator Fees and Expenses; Costs.

a) Arbitrator Fees Shared Equally. Except as otherwise provided in this Article, any arbitrator fees and expenses shall be borne equally by the Parties to the arbitration.

b) Cancellation/Postponement Fees. In the event either Party requests the cancellation or postponement of any scheduled arbitration proceeding which causes an arbitrator to impose a cancellation or postponement fee, the Party requesting such cancellation or postponement shall bear the full cost of the cancellation/postponement fee. In the event the Parties agree to settle any matter subject to this Article, or postpone the arbitration during the period of time in which the arbitrator will charge a cancellation/postponement fee, the Parties will equally bear the cost of the fee, unless the Parties agree otherwise.

c) Each Party Bears Its Own Costs. Unless the Parties agree otherwise, and except as otherwise set forth in this Article, in any arbitrations under this Article, each Party shall bear its own costs for any transcription of the hearing or any proceeding, and each Party shall bear its own costs otherwise associated with the arbitration, except that an arbitrator may award attorney fees to the Union in accordance with applicable law and regulation and to the Agency based on equity.

Section 6. Authority of the Arbitrator

a) Constraints on Arbitrator. An arbitrator selected under this Article is obligated to serve the Parties by applying Federal law and applicable regulations involving Federal service employment. Additionally, the arbitrator is obligated to apply the precedence of formal decisions issued by the Federal Labor Relations Authority, U.S. Merit Systems Protection Board, and courts of competent jurisdiction over Federal service employment, in issuing any decision, ruling on any matter, or ordering a remedy on matters presented to him or her under this Article.

b) Arbitrator's Code. An Arbitrator selected under this Article agrees to be bound by the Code of Professional Responsibility for Arbitrators and FMCS Arbitration Policies and Procedures in effect during the pendency of the arbitration. At the time of this writing, these documents may be found at the website of the FMCS (http://www.fmcs.gov).

c) Other Arbitrator Constraints. The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify or ignore in any way the provisions of this Agreement and shall not make any award that would, in effect, grant the Union or an employee or employees, any terms

which are not permitted by this Agreement.

d) Agreement Binds the Arbitrator. This Agreement constitutes the entire agreement between the Parties and there are no other agreements, written or oral, which affect the terms of this Agreement. In construing and interpreting this Agreement, the plain language contained within its four corners shall bind the arbitrator. Evidence extrinsic to this Agreement shall not be received or considered by the Arbitrator in interpreting or construing this Agreement, except with respect to any particular provision that is patently ambiguous.

e) Limitation on Matter Subject to Arbitration. The arbitrator may not consider any evidence or issue(s), other than evidence or issue(s) that have been identified in the grievance which is the subject of the matter the arbitrator has been selected by the Parties to hear.

f) Legal Standards. The legal standards to be applied by the arbitrator in deciding performance based actions and disciplinary actions shall be as follows:

A. In an adverse action that would otherwise be appealable to the U.S. Merit Systems Protection Board (MSPB), the standards used by that Agency shall be applied (pursuant to Article 13, Section 4(c) of this Agreement, any suspension or removal for national security reasons under 5 U.S.C. § 7532, and any removal taken under 5 U.S.C. Chapter 75, does not qualify as a covered adverse action subject to grievance procedures, and are therefore such suspensions and/or removals are exempt from these arbitration procedures). More specifically, this means that the charges underlying the action must be supported by preponderant evidence, and that the action must be taken "for such cause as promotes the efficiency of the Federal service."

B. In disciplinary actions that do no rise to the level of adverse actions, such as a reprimand or suspension of 14 calendar days or less, the standard to be used is that the charges underlying the action must be supported by preponderant evidence, and that the action must be taken "for such cause as promotes the efficiency of the Federal service."

C. In an adverse action or any other disciplinary action, the arbitrator shall apply the factors set forth in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), and precedents of the MSPB that interpret *Douglas*, in determining an appropriate penalty for misconduct.

D. A performance based action must be supported by substantial evidence of a "failure to perform a critical element of the position at an acceptable level."

E. An arbitrator accepting jurisdiction of a matter under this subsection shall be otherwise governed by the precedents of the U.S. Merit Systems Protection Board, the United States Court of Appeals for the Federal Circuit, and Federal courts interpreting the law of Federal employment matters, in rendering a decision.

g) Other. In other than disciplinary, adverse or performance based actions, the burden of

proof and production shall rest with the Party bringing the case to arbitration.

h) Information Requests. The Parties recognize the right of the Union to request data pursuant to 5 U.S.C. § 7114(b)(4). In addition, the arbitrator is empowered to enforce a reasonable request by the Agency for information, data, or documentation in the possession of the Union, or a Union witness in accordance with this Article.

i) Mediation by Arbitrator. An arbitrator may engage in the mediation of the matter brought to arbitration, but such mediation may only be undertaken upon obtaining the advance, mutual agreement of the Parties. Mediation, if scheduled, shall be no more than two business days in duration, unless otherwise mutually agreed upon by the Parties. If mediation does not produce a resolution of the entire dispute, the arbitrator shall begin the hearing no later than the day after mediation is completed. Refusal by a Party to participate in or agree to a mediated resolution may not be considered by the arbitrator in any aspect of his/her decision, or in rendering an award.

Section 7. Arbitration Hearing

a) Hearing Closed. The arbitration hearing shall be closed to anyone other than the participants in the arbitration hearing, unless the Parties otherwise agree in writing.

b) Scheduling Hearing. Arbitration hearings will be held at a mutually agreed upon date no later than ninety (90) calendar days after an arbitrator is selected. The Parties may mutually agree to extend any time limit.

c) Location of Hearing. Arbitration hearings will held at a facility in Miami, Florida, as determined by the Agency, unless agreed otherwise.

d) Stipulations. Narrative stipulations of fact may be submitted to the arbitrator as a joint filing, upon mutual agreement of the Parties. Further, a jointly agreed upon narrative of facts, together with data, documentation, etc., may be jointly submitted to the Arbitrator with a request for a decision without a hearing, based upon the stipulations and supporting materials, upon mutual agreement of the Parties.

e) Record of Hearing. Any Party wishing a record of the arbitration hearing or any other proceeding under this Article, including any transcription, shall:

A. Be solely responsible for obtaining and preserving such a record, including recording and/or transcribing;

B. Pay all costs associated with obtaining, preserving, recording, and/or transcribing such a record, including copying costs, unless the Parties agree otherwise; and

C. Provide the other Party with a complete copy of the record in whatever form it has

been reduced (e.g., tape recording, transcription, etc.), if the other Party agrees to pay one half the reasonable cost of obtaining the record (e.g., cost of obtaining tape recording, or transcription fees and costs).

D. In any arbitration on an adverse action, as defined by Article 21, Section 1 (Disciplinary and Adverse Actions), the Parties agree to retain the services of a professional, commercial transcriber for any hearing, and to share all transcription costs equally.

f) Conduct of Hearings. The Parties to the arbitration are entitled to be heard on matters relevant to the matter in controversy, including a reasonable opportunity to object to the introduction or receipt of testimony and/or evidence, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing, subject to the following:

A. The hearing shall be conducted expeditiously and in an informal manner.

B. The arbitrator may receive any in-person testimony or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or privileged evidence shall be excluded by the arbitrator.

C. Testimony and/or affidavits in connection with bargaining history may not be used in any agreed-upon mediation or during an arbitration hearing, unless one of the Parties has notified the other in writing prior to mediation and/or the hearing of its intent to use such testimony and/or affidavits.

g) Prohibition on *Ex Parte* Communications. No interested person or Party shall make or knowingly cause to be made to the arbitrator an *ex parte* communication unless agreed upon by the Parties.

h) Post-Hearing Briefs. The Arbitrator may request post-hearing briefs and determine the date that such briefs are due, prior to or at the close of the hearing.

Section 8. Award

a) Jurisdiction and Authority to Award. The jurisdiction and authority of the arbitrator shall be confined exclusively to the record adduced under the formal grievance resolution procedures (i.e., under "Step 2" grievance procedures) in the case of individual or group grievances, and if an institutional grievance, as stated in the initial grievance, unless otherwise mutually agreed to by the Parties.

b) General Limitation. The Arbitrator's authority to make an award is subject to applicable Federal law and regulation.

c) Award on Expenses. Any award may not include assessment of expenses against either

Party other than as permitted by law or as specifically provided for in this Agreement. In rendering a decision, an arbitrator must demonstrate with specificity that such an award is consistent with 5 U.S.C. § 5596 (i.e., the Back Pay Act of 1966, as amended), the Fair Labor Standards Act, or some other Federal Statute that grants a waiver of sovereign immunity against the U.S. Government.

d) Award on Attorney Fees. Should attorney fees be awarded, such fees shall not exceed comparable fees awarded by MSPB or Federal courts for similar matters, and in no case shall the hourly rate compensated exceed $150.00 per hour. The payment of Attorney fees under this Article is limited to the work of a single attorney. It is further limited to a ratio of no more than 8 hours of preparation time to each hour spent at hearing and no more than 24 hours for the preparation and submission of a brief. In no case shall an award of fees exceed $25,000.00.

e) Time to Award. The arbitrator shall make the award within 30 calendar days after the close of the hearing, or the closing date of the filing of any briefs, whichever date is later, unless the Parties agree to some other time limit.

f) Binding Arbitration. An Arbitrator's decision shall be final and binding on the Parties, unless exceptions or judicial review is sought under 5 U.S.C. § 7122, and/or 5 U.S.C. § 7123, or any other applicable law or government-wide regulation.

Section 9. Simplified Arbitration.

a) Simplified Arbitration on Mutual Agreement. After considering the complexity and importance of the issues involved, the Parties may mutually agree to submit any grievance, which has been processed through the formal grievance resolution procedures (i.e., under "Step 2" grievance procedures), to simplified arbitration as outlined below.

b) Procedures.

A. The Arbitrator selected for a simplified arbitration under the procedures set forth in Section 2 of this Article will convene a hearing within thirty (30) calendar days after selection, at a facility in Miami, Florida, as determined by the Agency, unless agreed otherwise.

B. No hearing transcript will be allowed and no post hearing briefs will be permitted.

C. The Arbitrator may render his or her award orally at the hearing, in which case the grieving Party shall be required to tape record and transcribe the award and provide a copy of the tape and transcription to the other Party. Alternatively, the Arbitrator may render a written award, but not later than ten (10) calendar days after the date of the hearing.

D. The Arbitrator shall bear in mind that a simplified arbitration hearing should normally last no more than a single day. The Arbitrator shall have authority to limit the Parties in

the presentation of evidence or witnesses so as to conclude the hearing within a single day.

E. The Arbitrator's fee for simplified arbitration shall be borne equally by both Parties.

ARTICLE 15
Equal Employment Opportunity

Management and the Union agree that the principle of equal employment opportunity is important and that in accordance with applicable laws, regulations and DOJ orders, no discrimination shall be tolerated on the basis of age, color, disability, national origin, race, religion, sex, or sexual orientation in any matter relating to employment.

ARTICLE 16
Hours of Work

SECTION 1
General

Both Parties recognize that the use of Alternative Work Schedules (AWS) can improve productivity and morale and provide greater service to the public. The use of AWS is authorized in accordance with governing laws, rules, regulations and this Article. AWS includes the following:

Compressed Work Schedule (CWS-5/4/9) and Flexible Work Schedule Program.

SECTION 2
Implementation of CWS Program

A covered employee's CWS schedule must not interfere with the efficiency of court operations. Management reserves the right to deny a request to participate in, or to change, a CWS schedule for business reasons such as operational needs.

The Parties agree that under CWS, an employee works five days one week and four another, within one pay period, with a Friday off (i.e., a 5/4/9 schedule). Each work day will be nine and one-half hours long including an uncompensated half hour for lunch, except for one Friday which will be eight and one half hours long.

Employees opting to work a CWS schedule as noted above will submit a request in writing to the Court Administrator or his/her designee. The request shall state the employee's desired work schedule, including their starting and ending hours. Within fifteen (15) business days after receipt of his/her request, the employee will receive notice as to whether the request has been approved or disapproved. If an employee's request for CWS is disapproved, an explanation will be provided

with such notice. Approved requests will be implemented the first full bi-weekly pay period after approval. Minor problems with CWS requests (e.g., scheduling conflicts) should be resolved informally between the supervisor and the affected employee(s). New employees may submit their written requests for CWS upon entrance on duty. If an employee wishes to change his/her schedule, they must submit a written request to the Court Administrator or his/her designee.

Participation in the CWS option will be voluntary. Employees will not be discriminated against or otherwise adversely affected by their selection of any CWS option.

SECTION 3
Miscellaneous

Employees who become ill during their CWS off-day will not be entitled to an alternative CWS off-day. If an employee's CWS off-day falls on a Federal holiday, the employee will be given the Thursday before that holiday as their off-day. Within any one pay period, employees who, without prior authorization of management, work on their CWS off-day are not entitled to an alternative CWS off-day and will not be compensated beyond 80 hours in the pay period.

Supervisors will temporarily change an employee's CWS schedule to a basic eight (8) hour per day schedule for such purposes as the employee's official travel or training, or other operational requirements, unless otherwise directed by management. At the conclusion of such a change in schedule, the employee will resume his/her previous CWS schedule no sooner than the following pay period.

An employee may request to change his/her work hours. Any change to an employee's work hours will be effective no sooner than following pay period after approval of the request. An employee who elects to participate in CWS must participate for a minimum of six (6) pay periods before the employee can opt-out of CWS or request to change his/her schedule.

For employees with performance, attendance or conduct issues, CWS may be rescinded at the discretion of management. Employees serving a disciplinary suspension will be placed on an eight (8) hour workday schedule during any pay period in which the suspension is scheduled.

SECTION 4
Termination of CWS Program

The Employer may take action to terminate this CWS program in accordance with applicable laws and regulations, including 5 U.S.C. § 6131.

ARTICLE 17
Tardiness

The Parties recognize that employees must be at work on time and that management has the right

to discipline employees for tardiness. Employees who arrive late for work must submit a leave slip to their supervisor by the end of the business day. Employees who do not submit a leave slip by the end of the business day will be charged AWOL for the period of absence.

ARTICLE 18
Lunch Period

Bargaining Unit employees are entitled to a half hour unpaid lunch period each day. A bargaining unit employee who is required to work through a lunch period and is not permitted by his/her supervisor to take a later lunch period, will be paid overtime or granted compensatory time to the extent required by applicable laws and regulations if working through lunch results in the employee working over his/her regular scheduled hours that day.

ARTICLE 19
Absence and Leave

In matters relating to the administration of absence and leave, the Parties and bargaining unit employees will be governed by applicable federal laws, DOJ Orders, and the following procedures in this Article.

An employee must request leave in advance from his or her immediate supervisor. If leave is not approved, the employee is expected to be working throughout the entire scheduled tour of duty. The following procedures must be followed when requesting leave.

SECTION 1
Annual Leave

Annual leave, except in the case of an emergency, is to be requested as far in advance as possible, but not less than 10 business days in advance, on a Form OPM 71. The need to ensure that the Court and each of its components continue to function smoothly and effectively is the principal consideration in approving or disapproving a request for leave. A decision to grant or deny the leave will be made as soon as possible.

Whenever an employee requests annual leave with less than ten (10) days notice, the employee must submit Form OPM 71 to the approving supervisor with as much advance notice as possible. The leave-approving supervisor will render a decision as soon as practical.

Conflicting annual leave requests and changes to planned leave, which cannot be resolved, will be resolved on the basis of work needs, date of submission, and then on seniority, as defined in Article 47. When sickness occurs during a period of annual leave, the employee may request annual leave be substituted by sick leave for the duration of the illness. When annual leave is scheduled in advance, management will not cancel that leave, except for an exigency of the public business.

Employees will not be called at home when on approved annual leave or sick leave except as outlined in section 6 below and in emergency situations.

SECTION 2
Unscheduled Leave

If the employee is unable to report to work on time or at all due to a personal emergency or sudden illness, the employee must personally request the appropriate leave from his/her supervisor or designee. This request must be made as soon as possible, but not later than the beginning of his/her regularly scheduled tour of duty. In the event that the employee cannot personally notify his/her supervisor or their designee, the employee must attempt to personally notify another supervisor. In the event that the employee fails in their attempts to personally notify either supervisor, he/she must telephone the Employer's Unscheduled Leave telephone number (number TBD by Employer). Extenuating circumstances of a highly unusual nature may prevent timely notification. Such circumstances will be carefully considered when management evaluates leave requests. If the personal emergency or sudden illness continues for more than one day, the employee must personally request leave from his/her supervisor for each day that the personal emergency or sudden illness continues, unless the employee's supervisor has approved other arrangements.

Until such notification is given, the employee's supervisor cannot grant leave and will consider the employee as Absent Without Leave (AWOL). Once proper notification is given and the employee's request for leave is granted, the employee's leave may be converted to the appropriate leave category. AWOL may subject an employee to disciplinary action. In some instances, the employee's supervisor may require certain documentation before approving a request for emergency or illness leave.

If an Employee needs to leave work during their tour of duty due to illness or emergency, the employee should personally notify his or her supervisor or their designee. If the employee is unable to personally notify his/her supervisor or their designee, the employee may notify the supervisor or designee by email or voice mail. If the notification is done by email, the employee shall copy the Court Administrator or the Deputy Court Administrator.

SECTION 3
Sick Leave

Requests for sick leave for non-emergency medical, dental, or optical examination or treatment should be submitted as far in advance as possible on a OPM Form 71. If the supervisor is unable to approve the leave for any reason, the supervisor will work with the employee to schedule the leave at a time that is mutually agreeable. When requesting unscheduled sick leave, the employee should use the notification procedures discussed in section 2 above.

When returning to duty from an absence of more than three (3) consecutive workdays due to

illness, the employee may be required to furnish a medical certificate signed by his/her physician. The medical documentation must include the dates of illness and clearly state that the employee was incapacitated for duty. If a physician or practitioner was not consulted, a signed OPM Form 71 from the employee giving the facts about the absence, the treatment used and reasons for not having a physician may be accepted as supporting evidence by the Employer. This documentation must be submitted within 15 calendar days following the return of the employee.

When an employee is returning to duty from an illness related absence of three (3) consecutive workdays or less, and a physician or practitioner was not consulted, a signed OPM Form 71 from the employee giving the facts about the absence, the treatment used and reasons for not having a physician may be accepted as supporting evidence by the Employer, unless the employee is on a leave restriction.

An employee may use sick leave when he/she is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy complications, or childbirth; receives medical, dental or optical examination or other treatment for such conditions; to replace or repair prosthetic devices and or train in the use of such aids including seeing eye dogs; or would jeopardize others by his or her presence on the job because of exposure to a communicable or contagious disease.

SECTION 4
Leave Restriction

Management may place an employee on leave restriction. When the Employer determines that leave restriction is no longer necessary, the leave restriction may be rescinded. Leave Restriction will be reviewed every six months.

Note: Being placed on leave restriction is not a disciplinary action. Rather, it is used to assist employees who are frequently out on unscheduled leave with improving their attendance and following leave procedures. In determining whether to put an employee on leave restriction, the Employer may take into consideration any special circumstances, such as illness, etc., that requires an employee to take leave.

SECTION 5
Tardiness Due to Hazardous Conditions

On occasion, conditions may develop during non-working hours which would make it difficult and/or hazardous (e.g. extreme weather conditions, flooding, hurricanes, etc.) for an employee to arrive at work on time but would not cause the office to close. In those cases, based on supervisory judgment, employees may be excused for tardiness for up to one (1) hour. However, employees are expected to make every reasonable effort to arrive at work on time.

SECTION 6
Special Circumstances

When an emergency condition occurs before the workday begins, a delayed arrival policy may be announced in conjunction with an unscheduled leave policy. In this situation, non-emergency employees should follow the delayed arrival/adjusted home departure and unscheduled leave policies. In the instance that the employee decides to use unscheduled leave during a delayed arrival/unscheduled leave day, the employee will be charged annual leave for the entire day. Only those employees who come to work will be awarded the delayed arrival hours.

Tardiness beyond an employee's actual arrival time at the work site when a delayed arrival is announced may be excused at the discretion of the Employer if the employee made a reasonably diligent effort to get to work on time. In determining the amount of additional excused absence to grant employees, the Employer may consider such factors as distance, availability and mode of transportation, amount of time late (e.g. over one hour) and the success of other employees in similar situations in reaching the workplace.

Workplace Closure: Prior to commencement of a workday, the Employer will notify each employee by phone, a major broadcasting network, or other appropriate communication media if the office is closed. If the Employer determines to close all or part of the office for a short period due to unplanned events beyond the control of management or employees which interrupt normal operations, administrative leave may be granted unless other alternatives are available. During the workday, employees will be notified if the Employer decides to close all or part of the office for a short period due to unplanned events beyond the control of management or employees which interrupt normal operations. Administrative leave may be granted to employees unless other alternatives are available. If an employee is granted annual leave to depart work early due to inclement weather, and the office is subsequently closed for early dismissal, the employee will be charged annual leave until the time of early dismissal.

If the office is closed due to an emergency, employees affected by the closure will be excused without loss of pay and without charge to leave. This section does not apply to employees who have been furloughed.

SECTION 7
Advanced Leave

Advanced leave is not an employee's right or entitlement. Requests for advanced leave must be submitted to management and in accordance with applicable regulations.

SECTION 8
Family and Medical Leave Act (FMLA)

Under certain conditions, an employee may be entitled to unpaid leave as detailed in current regulations. If an employee is interested in taking FMLA leave, he or she must submit a request to his or her supervisor. If the employee is unsure how to request leave under this act, the employee may contact the Human Resources Office for guidance.

SECTION 9
Leave Without Pay (LWOP)

Leave Without Pay is not an employee's right or entitlement. Therefore, each application for LWOP will be closely examined by management to determine whether the value to the Government or the needs of the employee are sufficient to offset the costs involved and the administrative inconvenience in approving LWOP. Extended LWOP may be approved for such purposes as education which would be beneficial to the Employer; recovery from illness or disability; or protection of employee status and benefits pending action by the Office of Worker's Compensation Programs (OWCP) on a claim resulting from a work-related illness/injury or during the period pending an initial decision by the Office of Personnel Management (OPM) on a disability retirement action. LWOP may be requested whether or not the employee has a positive annual and/or sick leave balance.

SECTION 10
Absence Without Leave (AWOL)

AWOL is absence from duty that the employee's supervisor has not authorized or approved (including leave which is not approved until required supporting evidence or documentation is submitted) or for which a leave request has been denied. Recording an absence of AWOL is not a disciplinary action, however, AWOL can become the basis for initiating disciplinary action. Some instances for which an employee may be charged AWOL include returning late from lunch, arriving late to work, and leaving work early and not submitting a leave slip at the end of the day in which the employee returns to work from unscheduled leave. Pay is forfeited for all absences reported as AWOL.

ARTICLE 20
Overtime

SECTION 1
Those hours worked in excess of an employee's normal work day will be compensated and administered in accordance with law, rule, and regulation. Overtime will not be approved, except on a case by case basis, in writing, in advance, by the Chief Immigration Judge, or his/her designee. In cases where an Immigration Judge requires an employee to work beyond the end of his/her normal work day, the employee will notify the immediate supervisor and courtesy copy the Court Administrator or his/her designee by email before leaving that day. That employee will then be paid overtime or granted compensatory time to the extent required by applicable laws and regulations.

SECTION 2
In cases where employees are required to work overtime outside the courtroom, selection for overtime work will be made on a voluntary, rotating basis among those employees determined by management to be the best qualified to perform the work. When insufficient volunteers are

available, reverse seniority entry-on-duty (EOD) will be used to select among those employees determined by management to be the best qualified to perform the work. (See article 48, Seniority).

SECTION 3
Employees working other than their regular assignment or attending training locally will be considered for overtime opportunities at their regular duty station as if they were working their regular assignment.

SECTION 4
A pattern of using leave during times when overtime is being assigned may be reason to deny future overtime opportunities or leave. This does not include leave that was approved prior to the announcement of the availability of overtime.

ARTICLE 21
Disciplinary and Adverse Actions

Section 1. Definitions

Disciplinary Action. Disciplinary action shall be defined as either a formal written reprimand, or a suspension from employment, without pay or duties, for fourteen (14) calendar days or less.

Adverse Action. Adverse action shall be defined as either a reduction in grade, a removal, a suspension for more than fourteen (14) days, without pay or duties, or a furlough without pay for thirty (30) days or less.

Section 2. Representatives

a) Manner of Designation. The employee must provide the employer with a written designation of any representative designated for purposes of this Article.

b) Limitation on Representatives Under this Article. The Employer may disallow as an employee's designated representative any individual whose activities as a representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release to undertake representative activities.

Section 3. Procedures

a) Disciplinary Action.

A. Although included in the definition at Section 1 of this article, formal written reprimand is expressly excluded from the following procedures.

B. Advance Notice, Content. Prior to taking a disciplinary action, except as provided under subsection c) of this section, the Employer will provide the employee with at least ten (10) days advance written notice proposing such discipline. The notice will state the reasons for the proposed disciplinary action, with sufficient detail to enable the employee to understand the reasons that the action is being proposed. Any notice provided under this subsection will inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice, subject to law, regulation, or internal Agency policy.

C. Opportunity to Respond, Extension. The employee will be provided with an opportunity to respond to the written notice orally and/or in writing within ten (10) days from receipt of the advance notice, and may furnish affidavits and other documentary evidence in support of a response. The employee may be granted an extension of the reply period, at the discretion of the designated deciding official, provided that the employee provides a valid reason or basis in support of such an extension, and the request is received within five (5) days from receipt of the advance notice.

D. Decision. After receipt of the written and/or oral response, or the termination of the notice period, whichever comes first, the Employer will issue a written decision to the employee which will include a statement of the employee's grievance rights. An employee against whom a disciplinary action is taken under this Article may elect to grieve such an action pursuant to Article 14 (Arbitration).

b) Adverse Action.

A. Advance Notice, Content. Prior to taking an adverse action on a basis other than as provided under subsection c) of this section, the Employer will provide the employee with at least thirty (30) days advance written notice proposing such adverse action. The notice will state the reasons for the proposed adverse action, with sufficient detail to enable the employee to understand the reasons the action is being proposed. Any notice provided under this subsection will inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice, subject to law, regulation, or internal Agency policy.

B. Opportunity to Respond, Extension. The employee may respond orally and/or in writing within ten (10) days from receipt of the advance notice, and may furnish affidavits and other documentary evidence in support of a response. The employee may be granted an extension of the reply period, at the discretion of the deciding official, provided that the employee provides demonstrated and valid reasons requiring such an extension, and the request is received within five (5) days from receipt of the advance notice.

C. Decision. After receipt of the written and/or oral response, or the termination of the notice period, whichever comes first, the Employer will issue a written decision to the employee which will include a statement of the employee's grievance and appeal rights. An employee against whom an adverse action is taken under this Article may elect to appeal an adverse action

through statutory procedures or the negotiated grievance procedure of this Agreement, but not both.

D. Pay Status During Notice Period. Employees will remain in a pay status during the notice period, unless the crime provision is invoked as set forth in subsection c), below.

c) Crime Provision. The above-referenced notice periods do not apply if the crime provision is invoked pursuant to 5 U.S.C. §7513(b)(1).

Section 4. Administrative Time.

Under this Article, employees may request in advance a reasonable amount of administrative time to prepare a response to proposed discipline or adverse action. Approval of such requests must be first obtained from the employee's supervisor, and are subject to the supervisor's consideration of factors such as the work needs of the court.

ARTICLE 22
Employee Health and Fitness

The Employer agrees that the well-being of bargaining unit employees at the workplace is of mutual interest to the Parties. Accordingly, the Employer is committed to providing a healthy, quality work environment for those employees.

Information on health and fitness is available to employees through the agency's Employee Assistance Program and other agency resources.

ARTICLE 23
Safety and Health

SECTION 1
Importance

Recognizing that employee safety is of paramount importance in the workplace, management may take immediately whatever action is necessary to minimize the risk of physical danger to employees of the Miami Immigration Court. Management agrees to solicit the Union's views on safety matters prior to making any safety-related changes, if practicable.

SECTION 2
Inspections

Any safety or health inspections conducted by General Services Administration (GSA) that are reduced to a written report will be provided to the Union, upon its request.

SECTION 3
Compliance With Safety and Health Procedures

For the safety and health of all Miami Immigration Court personnel, bargaining unit members shall timely and fully comply with all safety and health procedures implemented in the Miami Immigration Court.

SECTION 4
Monitors (Floor/Door/Elevator/Disabled)

The Parties recognize that management retains the right to assign monitors. Monitors will be provided their duties in writing.

ARTICLE 24
Workplace Accidents, Injury and Illness

SECTION 1
Reporting and Investigation of Occupational Illness and Injuries

Both Parties agree to encourage all employees to report all accidents and injuries immediately, as required by applicable laws, guidelines, standards, rules, and regulations.

The Employer will comply with applicable laws, guidelines, standards, rules, and regulations concerning the reporting of accidents and injuries.

Employees should report all occupational illness and injuries, regardless of their severity, as soon as possible after becoming aware of the illness or injury. The illness or injury should be reported to the immediate supervisor or designee.

The Employee will complete all accident/illness/injury reports and investigations, and provide the completed forms to the Human Resources Office. The Employer will promptly assist employees in completing required written reports in connection with job-related injuries or illnesses. Upon request, the Union may be given a sanitized copy of all accident/illness/injury reports and investigations.

In the case of serious occupational illness, injury, or death of an Employee, Management will attempt to notify the employee's next of kin and/or assist the employee in obtaining emergency medical treatment.

SECTION 2
Federal Workers' Compensation

Within a reasonable period after the Employer is notified of an employee's occupational injury or

illness, the Employer will inform the employee that he or she should complete a CA-1 or CA-2 form, as appropriate, and where to gain access to them.

Should the employee have questions about his/her rights under the Federal Employees' Compensation Act or how to complete the form, s/he may call the Human Resources Office.

Employees who are temporarily unable to perform their regularly assigned duties because of illness or injury but who are capable of returning to a duty status may, for a reasonable period of time, be assigned to duties that they are qualified to perform and that are compatible with their physical condition, in accordance with medical documentation.

ARTICLE 25
Facilities

Dismissals due to unusual employment or work conditions created by a temporary disruption of air cooling or heating systems should be rare. Employees are expected to work if conditions in the workplace are reasonably adequate even though those conditions are not normal and may involve minor discomfort.

Individual employees will notify their supervisors if they require a change in their work area due to unusual levels of temperature. If the Employer is unable to provide an alternate work area and the Employer determines that the problem cannot be corrected before the end of the employee's workday, the Employer may grant administrative leave, sick leave, annual leave or a combination thereof.

ARTICLE 26
Employee Assistance Program

SECTION 1
The Employee Assistance Program (EAP) is a confidential program designed to promote the well-being of employees and their family members through counseling and referral by assisting those employees whose personal problems may serve as barriers to satisfactory job performance.

SECTION 2
The Employer will administer the EAP in accordance with United States Department of Justice directives.

SECTION 3
When appropriate, the Employer will inform employees of the EAP program.

SECTION 4
The Parties acknowledge that information on the EAP program is available on the Intranet.

ARTICLE 27
Substance Abuse

SECTION 1
Employees with substance abuse or alcohol problems who voluntarily request assistance and participate in a prescribed program of treatment will not be disciplined only for participation in the program. The Parties encourage all employees who suspect they may have a substance abuse problem to voluntarily seek counseling and information as early as possible.

SECTION 2
No employee will have job security or promotion action jeopardized by a request for counseling or referral assistance.

SECTION 3
The Parties recognize that all confidential information and records concerning employee counseling and treatment will be handled in accordance with applicable laws, rules and government regulations.

SECTION 4
Administrative leave is normally authorized for employees attending counseling sessions with an EAP counselor, upon prior request. Employees who are referred for treatment in other rehabilitation programs should generally attend such programs outside of normal working hours. If such treatment is unavailable during non-working hours, employees may use sick leave, annual leave, or leave without pay to attend the programs subject to supervisory approval.

ARTICLE 28
Smoking Policy

SECTION 1
Recognizing that smoking is a risk to their health and well-being, the Parties mutually support and encourage all efforts by the employees to quit smoking. The Employer may encourage employee participation in smoking cessation classes, clinics, or other such activities. Recognizing it is the individual choice of each employee as to whether he or she will smoke, participation in a smoking cessation program will be voluntary.

SECTION 2

A GSA Bulletin captioned "Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace" (effective December 22, 2008) was issued to continue a smoke-free environment for Federal employees and members of the public visiting or using Federal facilities. The smoking of tobacco products is prohibited in all interior space owned, rented, or leased by the Executive branch of the Federal government. Employees may use tobacco products outside the building in permitted areas during non-duty hours.

ARTICLE 29
Position Classification and Description

SECTION 1
General

The Parties agree to the principle of equal pay for substantially equal work within the bargaining unit. The Employer agrees to maintain job descriptions, which accurately reflect the major duties and responsibilities assigned to bargaining unit members on a regular and recurring basis.

SECTION 2
Position Descriptions

Job descriptions of employees who are performing identical duties, at the same level of responsibility, with the same degree of supervision under the same supervisor, and with all other evaluation factors identical will, to the extent practical, be uniform. Employees will receive a copy of their job description upon appointment, position change, or a change in the job description within thirty (30) calendar days. Employees are responsible for retaining a copy of their current job description.

SECTION 3
Audits/Classification Appeals

If a bargaining unit employee believes that s/he is performing duties that are not covered by their position description, the employee should discuss the matter with his or her supervisor. A bargaining unit employee may request a position audit or pursue a classification appeal at any time. An employee cannot refuse to perform tasks which are assigned to him or her by the supervisor.

SECTION 4
Surveys

The Employer agrees to notify the Union when there are going to be any surveys or job audits affecting employees in the unit. When requested by the Union, the Employer may discuss it with the Union.

ARTICLE 30
Merit Promotion

The Merit Promotion Program will be administered in accordance with the EOIR policy. Any changes to existing policy will be negotiated to the extent required by law.

ARTICLE 31
Details/Temporary Promotions

SECTION 1
Temporary Promotions

Employees detailed to a higher-graded position, for which they meet Office of Personnel Management (OPM) qualification standards, for a period of more than one hundred and twenty (120) calendar days, must be temporarily promoted, replaced with a similarly qualified employee, not replaced at all, or replaced with a permanent employee after proper competition. If the employee remains in the higher-graded position, he or she will be paid for the temporary promotion at the beginning of the next pay period after the receipt of a personnel action form (SF-52) in the Human Resources Office. The temporary promotion will be initiated at the earliest date it is known by management that the detail is expected to exceed one hundred and twenty (120) calendar days. Adjustments will be made to the employee's workload when required to perform details to higher-graded work.

SECTION 2
Selection

Selection for details with known promotion potential or to higher-graded positions will be made by seniority from amongst those employees that management has deemed equally qualified and capable of successful performance in the detailed position. These details will be documented appropriately.

SECTION 3
Informal Details

Informal details are those which do not exceed thirty (30) calendar days. The employee will be informed of the duties of the detail. The Employee may call Human Resources to request to document a detail of thirty (30) days or less in his/her OPF.

ARTICLE 32
Performance Appraisal/Performance Improvement Plans

The Performance Appraisal Program and performance improvement plans will be administered in accordance with the EOIR policy. Any changes to existing policy will be negotiated to the extent required by law.

ARTICLE 33
Awards

Awards will be issued in accordance with EOIR policy. Any changes to existing policy will be

negotiated to the extent required by law.

ARTICLE 34
Travel/Temporary Duty (TDY)

SECTION I
Bargaining Unit employees will be informed of the opportunity or the requirement to perform temporary duty as much in advance as practical. The employees' work schedule will be changed accordingly to accommodate travel/temporary duty (TDY). When the Employer requires TDY and is unable to provide normal notice, the employee and supervisor will make reasonable efforts to accommodate special needs of the employee due to the short notice. Employees will not be expected to travel without valid travel orders. The Employer may consider financial hardship and other factors when assigning TDY when more than one (1) qualified employee is available for such assignment. The declaration of hardship by an employee will not cast any reflection on the employee's standing with the Employer or on their loyalty and desirability to the organization.

SECTION 2
To the greatest extent practicable, travel will be accomplished during normal business hours. When travel is scheduled outside of business hours, overtime/compensatory time will be provided in accordance with applicable laws and regulations.

SECTION 3
Employees will be entitled to benefits provided by the Federal Travel Regulations (FTR) or any governing regulation. Employees will not be required to use their privately owned vehicles for travel. When an employee is approved to use his/her privately owned vehicle for TDY travel, reimbursement will be in accordance with the FTR.

SECTION 4
When there is a choice to the mode of transportation or accommodations, the supervisor may consider the employee's desires, subject to cost considerations. Rental cars will be authorized to employees when warranted and authorized under law.

ARTICLE 35
Training and Employee Development

SECTION 1
The Parties recognize the value of career development for all employees and encourage bargaining unit employees to pursue career development. The Parties acknowledge that information related to career development is available on the Intranet/Internet and through the Human Resources Office.

Subject to operational needs and funding as determined by the employer, employees may be given the opportunity to pursue career development activities.

SECTION 2
The Employer recognizes that job-related training for employees is important especially training designed to improve the technical competence of Agency employees. The Employer will plan and may provide for the training and development of employees as required to accomplish the Agency's mission. This may involve different types of training such as refresher, technical, and specialized training. Employees are expected to share with fellow employees new skills and techniques acquired through such training.

Also, the Employer recognizes that there may be a need for bargaining unit employees to attend seminars or accredited courses for career development not provided by the Employer and on the employee's own time. Employees will not be required, but are encouraged, to share new skills and techniques acquired through such training.

The above training will be provided without undue disruption to the Agency's mission.

ARTICLE 36
Reduction in Force

SECTION 1
Purpose

This article is intended to establish and describe procedures the Employer will take in the event of a reduction-in-force (RIF), reorganization, or a transfer of function, as defined in the applicable regulations. It is also intended to protect the interests of employees while allowing the Employer to exercise its rights and duties in carrying out the mission of the Employer.

SECTION 2
Application

The Employer agrees that the application of laws and regulations relating to any matter in this Agreement will be fair and equitable. Where the Employer is left discretion in choosing a course of action in any matter covered in this Agreement, the Union will be notified of the course of action and given the opportunity to discuss it, to the extent required by law.

SECTION 3
When a decision has been made to take a reduction in force action, the Employer will keep the Union and the affected employees informed. To the extent required by law, the Employer agrees to notify the Union of the reasons, number and types of positions affected, approximate effective date of the action, and to provide an opportunity for the Union to present its views and ideas.

SECTION 4
To the extent permitted by law, an employee affected by a RIF action and/or their representative(s), designated in writing, may examine the retention registers and other pertinent

information for that competitive area relative to the action after offers of position or separation notices are received.

SECTION 5
All RIF actions will be carried out in strict compliance with laws and regulations, and relevant programs such as Career Transition Assistance Program and Interagency Career Transition Assistance Program (CTAP/ICTAP).

SECTION 6
Written notification to the Union of any RIF and/or transfer of function will be made at the earliest possible date prior to general notices to employees. The notification will include information to the extent required by law.

SECTION 7
Notice to Employees

The Employer will give an advance general notice, not more than ninety (90) days before the effective date of the action, to employees who may be affected by a RIF action.

The Employer will provide a specific notice of sixty (60) days before the effective date of the action to individual employees who will be affected by a RIF action.

SECTION 8
Competitive Areas

Management will establish competitive areas in accordance with governing regulations. Notification to the Union of the competitive areas will be made at the appropriate date. The Employer will temporarily suspend the filling of all bargaining unit vacancies in the competitive area of employees who will be affected by a reduction in force not more than sixty (60) days prior to issuing specific RIF notices.

SECTION 9
Filling Positions

A. The Employer will use vacancies to the maximum extent possible to place employees who would otherwise be separated in a reduction in force. RIF-affected employees will be given first consideration for reassignment to vacant positions for which they qualify in their competitive area.

B. The Employer will **assist** employees separated because of a RIF in registering for the Department of Justice's (DOJ's) Reemployment Priority List (RPL). In accordance with law, the Employer will give Employees on the RPL priority placement for open and available positions in the competitive areas for which they qualify, at or below the grade from which separated, before hiring someone from outside its own competitive service workforce.

C. The Employer will take all reasonable steps to make lateral reassignments to vacant positions and to waive non-mandatory qualifications to the maximum extent feasible to facilitate the placement of affected employees at the same or lower grade.

SECTION 10

A. Bargaining unit employees, if downgraded through no fault of their own, are entitled to pay and grade retention in accordance with 5 C.F.R., to the extent allowed by law.

B. Employees affected by RIF, and eligible for relocation entitlements, will be allowed all entitled benefits in accordance with applicable laws, rules and regulations.

ARTICLE 37
Contracting Out

SECTION I
The Employer will comply with applicable laws, rules, regulations, and Office of Management and Budget (OMB) Circulars concerning contracting out. The Union will be made aware by the Employer of information concerning any change in conditions of employment pursuant to the contracting out activity that affects bargaining unit employees.

SECTION 2
The local Union President will be provided with requested information to which the Union is entitled under applicable laws, rules, regulations, and OMB circulars concerning contracting out.

SECTION 3
Upon request, the Union will be provided the opportunity to be represented in meetings and on committees for which Union representation is permitted under applicable laws, rules, regulations, and OMB Circulars concerning contracting out.

ARTICLE 38
Office Conduct

All employees are on notice that they must conduct themselves in a professional manner at all times in the workplace and can be expected to be treated in the same manner. For example, behavior such as disrespectful conduct, foul language, failure to follow a supervisor's direction, physical abuse, and verbal abuse will not be tolerated.

ARTICLE 39
Cleanliness/Order in the Workplace

Individual Work Areas: Bargaining unit employees will keep their individual work areas orderly, clean and clear of empty boxes and excessive amounts of trash.

Common Work Areas: Bargaining unit employees will clean up after themselves in the common work areas. This includes not leaving behind office supplies, empty boxes, personal effects or trash.

Lunch Rooms: Bargaining unit employees using the lunch rooms will clean up after themselves, including wiping off counter tops, and washing sinks, their own dishes/utensils, and tabletops. Spills in microwaves/toaster ovens must be cleaned out as they occur. Items placed in refrigerators must be labeled with the employee's name. Unclaimed items will be discarded on Employer-designated clean-up days.

ARTICLE 40
Office Attire

The Parties agree that the work environment, which includes appropriate employee attire, should reflect efficiency, order, and professionalism. In keeping with that mutual understanding, the Employer expects employees to exercise common sense and good judgment when selecting work attire, but the Employer ultimately determines what attire is appropriate for the office and courtroom.

For example, distracting, provocative, or revealing clothing is not appropriate for the workplace. Similarly, any clothing displaying pictures, terms, or words that may be offensive to others is also inappropriate. Other attire may be deemed inappropriate by the Employer.

ARTICLE 41
Computer Usage

In accordance with EOIR and DOJ policies governing the use of computers and technology, employees may use computers for limited personal use. An employee's personal use of the Internet and e-mail services must not interfere with the mission of either EOIR or DOJ. Unlawful or inappropriate use of such technology is not permitted (e.g., accessing pornographic or sexually explicit oriented sites, engaging in Privacy Act or Hatch Act violations, or disclosing Limited Office Use, confidential, sensitive, classified, or FOIA-exempt information while using such equipment). Management reserves the right to monitor usage at any time (e.g., audit websites visited and time spent.)

ARTICLE 42
Telephone Usage

In accordance with EOIR and DOJ policies governing the use of computers and technology, personal telephone calls and texting are to be used for emergencies only and must be kept to a minimum. An employee's personal use of the telephone must not interfere with EOIR or DOJ missions. A cell phone or beeper must be kept on vibrate or silent mode and used for emergency purposes only.

ARTICLE 43
Audio Devices

Employees may not wear headphones or "earbuds" during duty hours. If an employee needs to listen to DAR, s/he must use computer speakers.

ARTICLE 44
Visitors

Employees are not allowed visitors in non-public work areas without prior approval from their immediate supervisor. Representatives outside of the Union (e.g., union representatives from the AFGE National) having a need to visit will be granted permission subject to operational and security considerations. The Union will give advance notice to the Employer of such a visit, normally at least two business days in advance.

ARTICLE 45
Transit Subsidies

SECTION 1
General Provisions
In accordance with applicable law, the Employer has adopted a transit subsidy program. All bargaining unit employees may apply for a non-taxable benefit equal to their commuting costs in the form of passes or vouchers purchased by the Employer with appropriated funds. The amount of the benefit shall be subject to the existence of the transit subsidy program and other limitations established by the Department of Justice, Internal Revenue Service, applicable law, and budgetary constraints.

SECTION 2
Certification of Eligibility

Certification of eligibility will be made on a form specified by the Employer and signed by the employee. Certification will be required at the beginning of each employee's participation in the program, and periodically at the Employer's discretion.

SECTION 3
Conditions for Termination

Employees who are approved to receive transit subsidy payments have an affirmative obligation to give prompt notice to the Employer should they no longer meet the requirements for participation in the program. Individuals whose commuting practices change are included in this requirement.

SECTION 4
Distribution

Transit subsidy payments will be available for pick-up by employees approved to receive them at sites and on dates designated by the Employer.

SECTION 5
Replacement of Lost Transit Subsidy Payments

Pursuant to the transit subsidy issuer, lost transit subsidy payments will not be replaced.

SECTION 6
Restrictions on Use

Transit subsidy payments issued under this article are not transferable and are to be used only for commuting to and from work, not including parking. Giving, selling, trading, and transferring transit subsidy payments issued under this Article to other individuals is prohibited. Purchasing or otherwise acquiring transit subsidy payments issued under this Article from another individual is also prohibited, even if the other individual is eligible to receive the subsidy. Employees who cease to use mass transit, or who leave the Employer will return any unused portion of the subsidy. Failure to comply with these provisions will result in the loss of eligibility to receive transit subsidies under this Article and discipline, among other consequences.

ARTICLE 46
Surveys

The Parties recognize that the Employer has the right to gather information directly from bargaining unit employees. To the extent possible, the Union will be given a copy of any survey in advance of its distribution to bargaining unit employees. Upon request, the Union will be provided with survey results relating to bargaining unit employees subject to any Privacy Act restrictions or restrictions of any other applicable laws.

ARTICLE 47
Seniority

For the purpose of this agreement, seniority will be determined by the Entry-on-Duty date at the Miami Immigration Court. If a tie occurs, it will be broken by the Service Computation Date.

ARTICLE 48
Impact and Implementation Bargaining

SECTION 1

General

It is agreed that personnel policies, practices and matters affecting conditions of employment not expressly contained in this Agreement, shall not be changed by the Employer without prior notice to, and if requested, negotiation with the Union unless the change is de minimis. The provisions of this Article apply to substance bargaining, if appropriate, and/or impact and implementation bargaining.

SECTION 2
Proposed Changes

The Employer shall provide the Union President with written notice of any proposed changes described in Section 1. The Union must notify the Court Administrator, within five (5) days after receipt of this notice, of its of intent to negotiate.

Within fifteen (15) days after receipt of the notice of proposed change, the Union must submit its proposal to the Court Administrator in writing. Should the proposals be negotiable, the Parties shall meet at a mutually agreeable time and place. If any of the Parties are not located locally, telephone and/or VTC will be used for the negotiations. The Parties agree that every effort shall be made to reach agreement as expeditiously as possible usually within thirty (30) days from the initial notice of the proposed changes. The negotiations shall be limited to the union's proposal(s).

Any written notice described in this section may be made by e-mail. Any deadlines may be extended upon mutual agreement of the Parties.

SECTION 3
Inadvertent Implementation

If the Employer, without having notified the Union in advance or without having provided the Union with an opportunity to bargain consistent with Section 2 of this Article, inadvertently implements a change that impacts conditions of employment, the Employer will cease implementation of the change upon notification by the Union of its request to bargain on the matter, unless the change is de minimis or is consistent with necessary Agency functioning. The Union will then be provided with an opportunity to submit negotiable proposals on the matter before implementation continues, consistent with Section 2 of this Article.

ARTICLE 49
Mid-term Bargaining

During the mid-point of this Agreement, either party may elect to reopen up to three (3) existing articles for renegotiation. If the agreement is reopened, all articles remain in full force and effect until mutual agreement is reached. The mid-point is defined as 18 months and 30 days after agency head approval.

ARTICLE 50
Duration

This Agreement shall become effective thirty calendar days from the formal approval by the head of the Agency, as provided by 5 USC § 7114 (c)(1), and shall remain in effect three (3) years thereafter. This Agreement will automatically be renewed for three-year periods, unless either party notifies the other in writing, during a window between ninety and sixty calendar days prior to the expiration of the agreement, that the party wishes to renegotiate all or part of the agreement.

APPENDIX

Official Time Categories and Corresponding Payroll Codes

(1) Term Negotiations: official time used by union representatives to prepare for and negotiate a basic collective bargaining agreement or its successor.

Payroll Code: 35

(2) Mid-Term Negotiations: official time used to bargain over issues raised during the life of a term agreement.

Payroll Code: 36

(3) General Labor-Management Relations: official time used for: meetings between labor and management officials to discuss general conditions of employment, labor-management committee meetings, labor relations training for union representatives, and union participation in formal meetings and investigative interviews.

Payroll Code: 37

(4) Dispute Resolution: official time used to process grievances up to and including arbitrations and to process appeals of bargaining unit employees to the various administrative agencies such as the MSPB, FLRA and EEOC and, as necessary, to the courts. (Please note that time spent for EEOC activities only applies to such activity by union officials in their capacity as union officials).

Payroll Code: 38