

**AGREEMENT  
BETWEEN**

**THE ADJUTANT GENERAL  
STATE OF SOUTH DAKOTA**

**AND**

**LOCAL #3035**

**AMERICAN FEDERATION  
OF  
GOVERNMENT EMPLOYEES  
AFL-CIO**

**Approved by the Department of Defense on February 9, 2017**

TABLE OF CONTENTS

<u>PREAMBLE</u>	3
<u>ARTICLE 1</u> Recognition and Unit Determination	4
<u>ARTICLE 2</u> Changes in Working Conditions & Matters Appropriate for Consultation and Negotiation	5
<u>ARTICLE 3</u> Management Rights and Responsibilities	6
<u>ARTICLE 4</u> Employee's Rights	7
<u>ARTICLE 5</u> Labor/Management Partnership Council	8
<u>ARTICLE 6</u> Negotiations	9
<u>ARTICLE 7</u> Union Representation	10
<u>ARTICLE 8</u> Use of Official Facilities	11
<u>ARTICLE 9</u> Performance Management	12
<u>ARTICLE 10</u> Hours of Duty	13
<u>ARTICLE 11</u> Overtime	14
<u>ARTICLE 12</u> Equal Employment Opportunity (EEO)	14
<u>ARTICLE 13</u> Leave Administration	15
<u>ARTICLE 14</u> Merit System-Employment & Promotions	18
<u>ARTICLE 15</u> Details/Temporary Promotions	19
<u>ARTICLE 16</u> Official Training	20
<u>ARTICLE 17</u> Reduction-in-Force, Realignment, and Reorganization	21
<u>ARTICLE 18</u> Safety and Health	21
<u>ARTICLE 19</u> Dues Withholding	24
<u>ARTICLE 20</u> Environmental Differential Pay/Hazardous Duty Pay	25
<u>ARTICLE 21</u> Disciplinary/Adverse Actions	25
<u>ARTICLE 22</u> Grievance Procedure	27
<u>ARTICLE 23</u> Arbitration	30
<u>ARTICLE 24</u> Temporary Duty (TDY)	31
<u>ARTICLE 25</u> Contracting Out	32
<u>ARTICLE 26</u> Ratification, Approval, Duration, and Distribution of Agreement	32

## **PREAMBLE**

In furtherance of the public policy objectives which the United States Congress sought to advance in passing Public Law 95-454, AFGE Local 3035 (hereafter referred to as the Union) and The Adjutant General (TAG), State of South Dakota (hereafter referred to as the Employer), collectively known as the Parties, hereby enter into the following negotiated agreement (this binding legal agreement is hereafter referred to as the contract).

The Parties enter into this contract in a sincere effort to;

- 1) Promote the accomplishment of the mission of the South Dakota Air National Guard in an efficient and effective manner,
- 2) Promote and enhance trust, communication, and cooperation between the Parties,
- 3) Provide fair, reasonable, safe and healthy working conditions for the employees covered by this contract,
- 4) Promote prompt and just resolutions of differences and grievances between the Parties, and,
- 5) Promote the morale of both of the Parties.

To the extent any Technician Personnel Regulation (TPR) or South Dakota National Guard Pamphlet (SDNG PAM) is incorporated by reference into this agreement, it is intended to provide guidance as to how a situation may be handled subject to the limitations of 5 USC 7106(a) which the Employer retains the right to exercise those rights.

Every unit employee covered by this contract, as well as every managerial representative of the Employer, are urged to read and review the terms of this contract in order to further the stated objectives of the Parties.

## ARTICLE 1

### RECOGNITION AND UNIT DETERMINATION

Section A. The Employer recognizes the Union as the exclusive representative of all employees in the South Dakota Air National Guard as defined in Section B of this article.

Section B. The Bargaining Unit to which this agreement is applicable is composed of all General Schedule and Wage Board, non-supervisory, non-professional personnel employed by the South Dakota Air National Guard, hereby referred to as the Bargaining Unit, except those personnel expressly excluded by Title 5, United States Code (USC) 7112.

Section C. In accordance with applicable laws and rulings, the Union agrees to represent all employees in the Bargaining Unit in good faith, without discrimination, and without regard to membership in the Union.

#### Section D. Definitions

- 1) Employer/Agency. The Adjutant General, State of South Dakota or designated Managers and Supervisors.
- 2) Union Official. Elected officers of AFGE Local 3035.
- 3) Union Representative. Elected officers and other representatives designated by AFGE Local 3035.
- 4) Parties. As defined in the Preamble.
- 5) Unit. All technicians of the South Dakota Air National Guard.
- 6) Bargaining Unit. As defined in Section B of this article.
- 7) Employee(s). General Schedule and Wage Board, non-supervisory, non-professional personnel employed by the South Dakota Air National Guard, except those personnel expressly excluded by Title 5, United States Code (USC) 7112.
- 8) Official Business. Whenever an employee is in a pay status, is performing duties required by the scope of his/her employment, and/or is traveling to and from various locations for the performance of those duties.

**ARTICLE 2**  
**CHANGES IN WORKING CONDITIONS**  
**&**  
**MATTERS APPROPRIATE FOR CONSULTATION AND NEGOTIATION**

Section A. The Parties agree to meet and to negotiate Memorandums of Understanding (MOU) on personnel policies and practices affecting working conditions to the fullest extent provided by Title 5 USC and Executive Orders, except as excluded by Title 32 USC, or as already provided for in this contract (refer to Section D of this article).

1) Such Memorandums of Understanding will be signed by the Employer, Union President, or their designated representatives, reviewed and upon approval of the Department of Defense (DOD), become a part of this contract for its duration.

2) Nothing in this contract shall be interpreted or claimed to deny or abridge a right the Union has under any existing law, Executive Order, or government-wide regulation, or is granted by any future law, Executive Order, or government-wide regulation.

Section B. Employer Changes/Modifications

(1) When the Employer intends to change or modify personnel policies and practices affecting working conditions, the Employer agrees when possible, in furtherance of the purposes stated in the Preamble to this contract, to meet and confer with the Union president or their designee and to notify the Union as soon as possible of the intended changes/ modifications.

(2) Normally the Union will be given fourteen (14) calendar days in which to reply to the Employer with regard to the changes. Although non-binding on the Employer, the Employer agrees to consider the Union's reply in good faith, and will notify the Union of its final decision as soon as possible thereafter.

Section C. Regardless of any provisions in this contract, except for provisions which explicitly provide for more specific notification and negotiation procedures over the subject matter of the article, whenever personnel policies and practices affecting working conditions of employees are changed, the parties, when possible, will negotiate the impact and implementation of the changes if requested by the Union, prior to the effective date of the changes.

Section D. In accordance with 5 USC 7119, the Parties may utilize the services of the Federal Mediation and Conciliation Service (FMCS) in an attempt to resolve any impasses in negotiations. If such mediation efforts are unsuccessful, the services of the Federal Service Impasses Panel (FSIP) shall be utilized to resolve the impasse.

## ARTICLE 3

### MANAGEMENT RIGHTS AND RESPONSIBILITIES

Section A. As in 5 USC 7106, subject to subsection 3) of this section, nothing in this chapter shall affect the authority of any management official of any agency:

- 1) To determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
- 2) In accordance with applicable laws:
  - a) To hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees,
  - b) To assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted,
  - c) With respect to filling positions, to make selections for appointments from:
    - (i) Among properly ranked and certified candidates for promotion, or,
    - (ii) Any other appropriate source; and
  - d) To take whatever actions may be necessary to carry out the mission of the agency during emergencies.
- 3) Nothing in this section shall preclude the Employer and the Union from negotiating,
  - a) At the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or the technology, methods and means of performing work,
  - b) Procedures which management officials of the agency will observe in exercising any authority under this section; or
  - c) Appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

Section B. When emergency procedures are invoked by the Employer, the Employer shall, when possible, advise the Union of the circumstances causing the emergency and its expected duration. In any emergency, the Employer agrees to give due regard to the welfare of the employees.

Section C. The Employer has the right to poll or survey the Unit strictly for the purpose of obtaining information. Polling or surveying Bargaining Unit Employees without Union permission for the purpose of obtaining their opinions or reactions to proposed changes in conditions of employment or personnel policies and practices is prohibited.

## ARTICLE 4

### EMPLOYEE'S RIGHTS

#### Section A

- 1) The Union and the Employer recognize and agree that each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Such rights include the right:
  - a) To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress or other appropriate authorities; and
  - b) To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under Chapter 71 of Title 5 USC.
- 2) The Employer shall take action consistent with law or with directives from higher authority to ensure that employees are informed of their rights and that no interference, restraint, coercion, or discrimination is practiced by the Employer to encourage or discourage membership in the Union.

Section B. Pursuant to 5 USC 7121, an employee has the right to pursue a grievance through the negotiated grievance procedure in Article 22 of this contract.

Section C. Both Parties agree that nothing in this contract will be construed as denying an employee a right that they have by law or regulation.

Section D. The Employer affirms the right of its employees to conduct their private lives as they deem fit as long as this conduct does not violate applicable laws, regulations, or policy.

Section E. Contingent on available resources, the Employer agrees that employees shall be provided an opportunity to participate in benefits and pre-retirement briefings.

Section F. Employees will be furnished a copy of their Position Description (PD) initially and as changes occur.

#### Section G

- 1) Employees will be promptly notified in writing when an action is to be taken that would adversely affect their grade or rate of compensation. The notice will provide the employee with their appeal rights, including the right to appeal a reduction in grade to the Office Personnel Management (OPM) per 5 Codified Federal Regulations (CFR) 511.604, Subpart F, for General Schedule employees, or 5 CFR 532.701, Subpart G, for Wage Board employees.
- 2) An employee who feels their job is improperly classified may request a desk audit through their supervisor to the Human Resource Office (HRO).

3) Subsequently, an employee who continues to feel their job is improperly classified should follow the statutory appeal procedures referenced in paragraph 1, Section G.

4) Employees who are aggrieved with regard to tasks they feel are unfairly assigned based on their job title, grade, and description should follow the negotiated grievance procedure in Article 22 of this contract.

Section H. Other than the employee, only persons designated in applicable regulations will be allowed access to an employee's National Guard Bureau (NGB) 904-1 or Supervisory Work Folder and electronic Official Personnel Folder (eOPF). Each employee shall have access to inspect and/or copy any document in their NGB 904-1, Supervisory Work Folder, or eOPF.

Section I. The Employer shall inform each new employee of the Union's exclusive recognition, and provide the employee with a copy of this negotiated agreement and the current list of Union officers and stewards. The employee will be advised of their right to join or not to join the Union and to freely participate in Union activities without fear or threat of reprisal. At the conclusion of the orientation, the new employee may be introduced to a Union officer or steward.

## **ARTICLE 5**

### **LABOR/MANAGEMENT PARTNERSHIP COUNCIL**

Section A. The Employer and the Union agree that a Labor-Management Partnership Council (LMPC) is essential. The purpose of the LMPC is to evaluate, analyze, implement and monitor matters affecting Labor/Management relations, to include this contract.

Section B. The Employer and the Union will select their own representatives to serve on the Council, which will consist of three primary members and one alternate from each Party.

Section C. Decisions of the LMPC will be by consensus and binding on the Parties. This council will not hear formal grievances. Council decisions will in no way change the terms of this contract or nullify or abrogate the statutory rights of the Employer or the Union.

**ARTICLE 6**  
**NEGOTIATIONS**

Section A. Negotiations for the purpose of this contract under Title 5 USC and the terms of this contract are the mutual obligation of the Employer and the Union. Either Party within the provisions of this contract may request negotiation sessions in writing. Such requests shall state the specific subject matter to be discussed at the session.

Section B. Subjects appropriate for negotiation between the Parties are personnel policies and practices and other matters relating to or affecting conditions of employment. If a change itself is not subject to negotiations, its impact upon the employees and procedures for implementing the change may be negotiated. It is understood that no provisions of this contract shall nullify or invalidate the rights of employees, the Union, or the Employer established by Title 5 USC, other statutes, or regulations of appropriate authority.

Section C. Negotiation Procedure

1) The primary means for negotiations will be through the LMPC utilizing the Interest Based Negotiation (IBN) process. The LMPC will review the contract and address issues and concerns. Any concerns that cannot be reconciled by the LMPC will be remanded to traditional negotiations.

2) Traditional Negotiation Procedure

a) Each party will designate persons to serve as members of the negotiating team. The names of team members will be exchanged by written correspondence between the Employer and the Union fourteen calendar days prior to the negotiating session. One person from each team will be designated as spokesperson who will be the chief negotiator. When authorized by the chief negotiator, any member may speak on the matter under discussion.

b) An alternate may replace any member of either team. The alternate will be entrusted with the same right to speak for the party they replace. Names of alternates and the team members they replace will be submitted to the chief negotiator prior to the start of the session.

c) Observers will not be permitted to attend negotiating sessions.

d) Either party may invite an advisor.

3) In accordance with 5 USC 7119, the Parties may utilize the services of the FMCS in an attempt to resolve any impasses in negotiations. If such mediation efforts are unsuccessful, the services of the FSIP shall be utilized to resolve the impasse.

## ARTICLE 7

### UNION REPRESENTATION

Section A. The Employer agrees to recognize elected officers, and other designated representatives of AFGE Local 3035. Such officers, stewards, and other designated representatives are hereafter referred to as Union Representatives.

Section B. The Union will determine the number (not to exceed one (1) steward per ten (10) bargaining unit employees) and location of stewards in the South Dakota Air National Guard, and after designating those stewards, will provide the Employer with a list of their names and area of responsibility. The Union will notify the Employer, in writing, of any changes to this list.

Section C. The Employer agrees that the president of the Union or designee is authorized to consult with the Employer. Meetings with the Employer shall be pre-arranged and take place at a time and place agreeable to the Parties involved.

Section D. The Employer agrees that AFGE National Representatives who are not members of the Bargaining Unit will be admitted to the installation upon advance notification of such representatives' intent to conduct Union business. A minimum of one hour's notice will be given and the nature of the business to be conducted shall be given to the Employer. However, in no situation shall outside Union Representatives be subjected to access restrictions more severe than those applied to other visitors to the base.

Section E. Union Representatives may receive and process complaints, grievances and other appeals on government property and in full privacy.

#### Section F. Official Time

- 1) The Parties recognize that the utilization of official time by Union Representatives contributes to the effective and efficient operation of the South Dakota Air National Guard by facilitating and encouraging just and amicable settlements of disputes with the Employer.
- 2) Union Representatives will be allowed necessary and reasonable amounts of official time to properly carry out the representational or bargaining duties. The Union agrees that it will encourage its representatives to use a minimum amount of official time when conducting Union business.
- 3) When Union representatives leave their work during regular working hours to transact appropriate Union business, they shall first inform their immediate supervisor. Upon entering a work area under the cognizance of another supervisor, Union Representatives shall advise the supervisor of their presence and of the name of the employee to be contacted. Union Representatives will notify their immediate supervisor upon their return to work. Supervisors in these instances will normally not object unless there is an operational necessity. If there is an operational necessity that prevents the Union Representative from being released immediately, arrangements will be made for the Union Representative to be released within twenty-four hours, or the Union may opt to assign another representative.

4) Should the Employer request a particular Union Representative to conduct a specific matter of business at a time when such representative is normally off-duty, that representative shall be converted to official time for the time that they are conducting the business.

5) A Union Representative will not be disadvantaged, discriminated or retaliated against in any way, such as but not limited to their performance appraisal or promotion potential, as a result of the time spent in official time status.

6) The Employer agrees to grant employees, in their capacity as Union Representatives, official time not to exceed 32 hours per official in the calendar year for the purposes of attending training or education programs involving matters of mutual concern to the Union and the Employer. This will in no way restrict the Employer from granting more hours if the agenda submitted by the Union justifies approval.

7) The Union agrees that official time granted in accordance with this article will not be used for any matters connected with the internal management or operation of the Union (i.e. soliciting membership, collecting dues, electing officers, etc.). However, a reasonable amount of official time will be granted the Union for the preparation of legally mandated reports, such as the annual Department of Labor report, or Internal Revenue Service reports.

8) Time spent by Union Representatives in jointly attended Labor/Management training and/or education programs or briefings will be considered official time.

Section G. If requested by the Union, the Employer will furnish a list of names, position titles, grades, and organizational units of all employees in the Bargaining Unit. If the Employer identifies any position excluded from the Bargaining Unit, the Union may file for Clarification of Unit.

Section H. The Union will promptly notify the HRO and the Employer, in writing, of any changes in the Union's mailing address or telephone numbers.

## **ARTICLE 8**

### **USE OF OFFICIAL FACILITIES**

Section A. The Employer agrees to provide the Union adequate office space that is securable. The Employer further agrees to provide office furnishings to include a phone and fax line. Long distance commercial phone call expenses will be borne by the Union.

Section B. The Union shall have access to government telephones, copy machines, printers, and computers with network access for use in conducting representational duties. There will be no charge for Union use of Government owned copiers.

Section C. The Union President or designee may have access to the public address system to make announcements to employees. The Union may also have access to the existing base distribution system for announcements and other communications.

Section D. Copies of laws, regulations, ANG directives and other publications impacting personnel practices and policies shall be made available for Union review.

Section E

- 1) The Union will also be afforded a SharePoint site to be maintained by Union President or designee for display of Union information, correspondence, or notices.
- 2) Information posted on SharePoint or distributed on the base must not violate any law, the security of the base, or contain derogatory or libelous material.

## **ARTICLE 9**

### **PERFORMANCE MANAGEMENT**

Recognizing the importance of the performance appraisal, both the Employer and the Union agree that the contents of SDNG PAM 430 should be accorded the widest dissemination possible.

- 1) Supervisors will, with input from their subordinate employees, establish job objectives and performance indicators, inform employees of their level of performance, inform employees as to how their performance compares with established performance indicators, and give guidance and assistance as necessary on how their performance can be improved.
- 2) Employees will advise supervisors of the need, if necessary, to revise job objectives and performance indicators during the rating period, request clarification of any objective not clearly understood and identify work problems, and, in cooperation with supervisors, help with the resolution of these problems.
- 3) See SDNG PAM 430 for Appeal process.

**ARTICLE 10**  
**HOURS OF DUTY**

Section A. Definitions

- 1) The administrative workweek means a period of seven (7) consecutive calendar days, Sunday through Saturday, designated in advance.
- 2) Basic workweek means five (5) eight-hour days, within the administrative workweek.
- 3) Staggered workweek means that workdays are staggered to provide six day or seven day coverage.
- 4) Compressed workweek means a forty (40) hour work requirement which is scheduled for less than five (5) workdays within the administrative workweek.
- 5) Flexible workweek means a forty (40) hour workweek within the administrative workweek with designated hours and days during which an employee must be present for work and designated hours during which an employee may elect the time of their arrival at and departure from work.
- 6) Credit hours means any hours, within a flexible workweek, which are in excess of an employee's basic work requirement and which the employee elects to work so as to vary the length of a workday.

Section B. A lunch period will be provided within the hours established for the normal workday, but shall not be considered duty time. In the event an employee must work during the normal lunch period, the employee will be provided another lunch period.

Section C. In accordance with 5 CFR 610.121 the employer will give the employee at least seven (7) calendar days notice prior to the first administrative workweek in which the change occurs.

Section D. Premium pay for Sundays and holidays that are authorized shall be paid in accordance with government-wide regulations. Employer agrees that to the extent it considers reasonable and feasible, it will not arbitrarily modify work schedules so as to adversely affect employee pay.

Section E. A fitness period may be established per TAG policy letter.

Section F. On Call compensation is governed by 5 CFR 551.431.

## **ARTICLE 11**

### **OVERTIME**

Section A. Employees under either the General Schedule or Wage Board Schedule are not entitled to financial compensation for overtime worked per 32 USC 709(h). If overtime work is required, the employee shall be granted compensatory time (comp time). Comp time must be taken on an hour for hour basis.

Section B. Overtime work will be held to a minimum. The Employer agrees in principle to a generally equitable distribution of overtime within specific operating units where overtime is required.

Section C. When unscheduled overtime work is required, employees assigned to overtime work shall be given as much advance notice as possible. When an employee is called in to work overtime at hours unconnected to their normal workday or on days not part of their normal workweek, a minimum of two hours of comp time will be provided to the employee. The employee may be released from duty as soon as the work task(s), which necessitated the calling-in of the employee, are completed.

Section D. The Employer may assign the employee overtime work, which is within their job classification. Volunteers will be utilized whenever possible. However, the Employer retains the right to assign the employee such work as may be deemed necessary.

## **ARTICLE 12**

### **EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

Section A. The Parties agree to cooperate in providing equal opportunity in employment for all persons and to prohibit sexual harassment or discrimination on the basis of age, race, color, religion, gender, national origin, genetic information, sexual orientation or disability.

1) The Parties may utilize the LMPC (refer to Article 5 of this contract) to advise each other of existing or potential problems relating to equal opportunity, discrimination, or sexual harassment, to jointly seek solutions to such problems, and to otherwise administer the provisions of this article.

2) The Union shall be provided copies of the South Dakota National Guard Affirmative Employment Plan.

3) In order to promote EEO objectives, employees who engage in discriminatory practices may be subject to disciplinary/adverse actions.

Section C. The Employer will conspicuously post throughout the base the names and work phone numbers of EEO counselors and provide copies of the South Dakota National Guard Affirmative Employment Plan to employees upon request.

Section D. Employees who decide to file complaints of discrimination or sexual harassment will file through statutory procedures. EEO complaints are specifically excluded from the negotiated grievance process of this contract.

## **ARTICLE 13**

### **LEAVE ADMINISTRATION**

Section A. All leave will be in accordance with 5 CFR 630 and SDNG PAM 630.

Section B. Annual Leave

- 1) Every reasonable effort will be made to fulfill annual leave requests. Should a scheduling conflict occur, the supervisor/manager will confer with the employee(s) concerned to obtain mutual agreement to resolve the conflict.
- 2) The use of accrued annual leave is the right of the employee, not a privilege. However, the supervisor/manager retains the right to approve the time at which leave may be taken.

Section C. Sick Leave

- 1) Sick leave will normally be authorized. In accordance with government-wide regulations, employees may self-certify absences of up to three (3) workdays.
- 2) Sick leave may be advanced to an employee, not to exceed two hundred forty (240) hours at any one time. Sick leave may be advanced when all of the following conditions have been satisfied:
  - a) The request for advancement of sick leave will be supported by a medical certificate which substantiates that a serious illness or injury exists. Submitted through supervisor to HRO.
  - b) All available accumulated sick leave will be exhausted before advancement.
  - c) There is reasonable assurance that the employee will return to duty to earn and repay advanced credits.

3) The Employer may provide light duty to help reduce the employee's use of sick leave and annual leave.

#### Section D. Family Friendly Leave

1) Employees may use sick leave in cases of childbirth, sick and ailing family members, and in cases involving the arrangement and attendance of said family member's funeral.

2) Employees may use sick leave for the purposes relating to the adoption of a child. An adopting parent may request sick leave for court proceedings, required travel, appointments with adoption agencies, social workers, attorneys, and any other activities necessary to allow the adoption to proceed.

#### Section E. Family and Medical Leave

1) An employee shall be entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- a) The birth of a child of the employee and the care of such child;
- b) The placement of a child with the employee for adoption or foster care;
- c) The care of a spouse, child, or parent of the employee who has a serious health condition; or
- d) A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.

#### Section F. Leave Without Pay (LWOP)

1) In addition to LWOP under the FMLA, employees may also be entitled to use LWOP in the following situations:

- a) Reservists and National Guardsman who are entitled to a leave without pay absence IAW 5 USC 6323, and,
- b) Employees receiving injury compensation (Office of Worker's Compensation Program - OWCP) under Chapter 81 of 5 USC.

2) LWOP requests for the purpose of engaging in Union activities on the national level will be subject to Employer approval. Such requests will be made in writing. The employee shall be entitled to return to a comparable graded position at the end of the period of LWOP, and shall continue to accrue benefits in accordance with laws and regulations.

3) Employees who are in a LWOP status immediately before and immediately after a holiday are not eligible to be paid for the holiday. In order for the employee to be eligible for holiday pay, the employee must be in an appropriate paid leave status for the last hour of the workday immediately preceding the holiday or the first hour of the day immediately following the holiday within the same pay period.

## Section G. Court/Jury Leave

- 1) An employee is entitled to paid time off for:
  - a) Jury duty with a Federal, District of Columbia, State or Local court
  - b) Witness duty on behalf of the Federal government, District of Columbia, or a State or Local government, or,
  - c) Witness duty on behalf of a private party when the Federal government, District of Columbia, or a State or Local government is a party to the judicial proceeding
- 2) Employees serving as witnesses or on jury duty shall, upon request, be assigned to the day shift during the duration of such duty.
- 3) Employees who serve as a witness in trials not involving any government entity will be in an appropriate leave status.

## Section H. Military Leave

- 1) Employees are entitled to 120 hours of regular Military Leave in a fiscal year. Employees may, in addition to Active Duty (AD) or Active Duty for Training (AT), use Military Leave during periods of Inactive-Duty Training (IDT); i.e., Re-scheduled Training (RST), Additional Flight Training Period (AFTP), Readiness Management Training period (RMP), Additional Training Period (ATP), Rescheduled Unit Training Assembly (RUTA), Proficiency Training (PT), Unit Training Assembly (UTA) or Multiple Unit Training Period (MUTA).
- 2) Those who do not use the entire 120 hours can carry over up to 120 hours of unused Military Leave to the following fiscal year, for a maximum of 240 hours.

## Section I. Leave Sharing Program

- 1) The Leave Sharing Program is available to all employees as described in 5 CFR, Part 630, subpart J, Volunteer Leave Bank Program and Subpart K, Emergency Leave Transfer Program.
- 2) This program permits employees to donate annual leave to fellow employees.

Section J. Blood Donation. Employees are encouraged to serve as blood donors and may be excused from work without charge to leave for the time necessary to donate blood.

## Section K. Administrative Leave for Union Training

- 1) Requests for such leave will be submitted in writing by the Union President, or designee, to the Employer at least 30 calendar days in advance.
- 2) The financial costs involved with Union Representatives' attendance at such programs will be borne by the Union.

## Section L. Law Enforcement Leave (LEL)

1) 5 USC 6323 (b) provides 22 workdays per calendar year for emergency duty as ordered by the President, the Secretary of Defense, or a State Governor. LEL is used to provide military aid to enforce the law, assist civil authorities in the protection or saving of life or property or the prevention of injury, or during contingency operations. Each National Guard technician serving under a permanent or indefinite status appointment, and a member of the National Guard, is entitled to LEL for not more than one hundred seventy-six (176) hours in any calendar year. This additional leave is authorized without loss or reduction of leave to which otherwise entitled.

2) Employees ordered to State Active Duty (SAD) in support of drug interdiction operations, search and rescue missions, blizzards, forest fires, etc., or Federal Active Duty in support of a contingency operation, may elect to use annual, comp or LWOP prior to using LEL.

3) Unused LEL is forfeited at the end of the calendar year, and a new 176 hours is established.

Section M. 44-Day Military Leave. This benefit provides employees on Title 10 Active Duty, in support of combat as well as non-combat operations outside the continental United States, its territories and possessions, to leave entitlements without loss of employee benefits. This leave entitles an employee to receive up to 44 days of military leave for active duty while in an employee pay status. For employee non-workdays, an employee would receive active duty pay. While in this status, the employee is under complete military jurisdiction. This additional leave is not the same as your normal 120 hours of Military Leave.

Section N. Assistance. Employees with questions concerning all leave should contact their supervisor and as appropriate the HRO.

## ARTICLE 14

### MERIT SYSTEM-EMPLOYMENT & PROMOTIONS

Section A. The Employer shall utilize to the maximum extent possible the skills and talents of Unit Employees when filling job announcements within the Unit, consistent with merit promotion principles (5 USC 2301) and the SDNG Pamphlet 335T on Merit Placement.

Section B. Job announcements will be posted on USAJOBS, in the Unit Training Assembly (UTA) Bulletin, and on the board outside of HRO, as well as distributed via email to ensure that personnel are aware of the job announcements. Unless mutually agreed upon, job announcements will be posted for not less than 15 calendar days.

Section C. A Union Official will be permitted to review sanitized copies of the following records used in the selection process:

1) Initial Screening Worksheet.

- 2) Knowledge, Skills, and Abilities Category Worksheet.
- 3) Rating Worksheet.
- 4) Referral and Selection Certificate.

Section D. Disputes arising out of the selection **process** may be grieved through the negotiated procedure, identified in Article 22. A grievance will not be considered when it is based solely on non-selection.

Section E. For disputes with an EO basis, State Equal Employment Manager (SEEM) will be consulted.

## **ARTICLE 15**

### **DETAILS/TEMPORARY PROMOTIONS**

Section A. Details are official personnel actions by which a Unit Member is assigned duties and responsibilities other than those of their permanent position, but receives the pay attached to their permanent position, unless a temporary promotion is involved.

Section B.

- 1) Unless competitive procedures are used, selection of Unit Members for details normally shall be distributed equitably among those Unit Members whom may have the capacity or skills required for assuming the responsibilities of the assignment.
- 2) Unit Members in the immediate work area will receive first consideration for temporary promotions of less than 120 calendar days.
- 3) Unit Members may be detailed for medical reasons.

Section C. When a Unit Member is detailed to a position for which they have little or no experience, the Unit Member will be given training and a reasonable period of time to learn the new job.

Section D. Whenever a Unit Member is detailed to a higher graded position that will exceed 30 calendar days in duration, they will receive a temporary promotion.

Section E. Repeated details of an employee for periods of 30 days or less, interrupted by short-term returns to the permanent position, normally will not be allowed.

Section F. Normally details of 30 days or less will be documented by the supervisor in the Unit Member's NGB 904-1 or Supervisory Work Folder. Details in excess of 30 days, and all temporary promotions, will be documented by a SF-50 (Notification of Personnel Action).

## **ARTICLE 16**

### **OFFICIAL TRAINING**

Section A. The Parties agree that the training and development of Unit Members is a matter of prime importance to the accomplishment of the mission of the South Dakota Air National Guard. Unit Members shall have the opportunity for the maximum amounts of training and development which is feasible and appropriate. Among the matters appropriate to consider are:

- 1) Identification of skills for which scarcities exist.
- 2) Identification of situations wherein training could aid in improving operations and the accomplishment of the mission.
- 3) Identification of retraining needs which may result from upcoming changes in mission, organization, and function.
- 4) Identification of training needs which may result from the installation of new equipment, machinery, process, or other technology.
- 5) The use of cross training to expand the skills and work experiences of Unit Members, thereby providing for a more flexible work force.
- 6) Ways to encourage and stimulate Unit Member's interest in self-development.

This listing is not meant to be all-inclusive.

Section B. Unit Members who are required to attend training that requires travel on weekend or other non-workdays will be compensated in accordance with applicable laws and government-wide regulations, including Joint Travel Regulations (JTR).

## **ARTICLE 17**

### **REDUCTION-IN-FORCE, RE-ALIGNMENT, AND RE-ORGANIZATION**

Reduction-in-Force (RIF), re-alignments, and re-organizations, may require the movement or displacement of employees. In most cases, reduction of positions does not necessarily result in the employee's separation. Management will make every effort to avoid involuntary separations by considering management-directed re-assignments, separation pay incentives, employee-requested downgrades, furloughs, voluntary retirement, elimination of temporary employment, and hiring restrictions.

Reduction-in-force, re-alignment, and re-organizations should be implemented only as a final solution. All policy and instructions necessary to conduct a reduction in force are contained in SDNG PAM 351. 32 USC 709(f) excludes National Guard technician employees from the provisions of 5 USC 3502 (Order of Retention) and 5 USC 2108 (Veterans Preference).

## **ARTICLE 18**

### **SAFETY AND HEALTH**

#### Section A. General Statements

- 1) The Employer will provide and maintain safe and healthy working conditions for employees and will comply with the applicable laws and regulations relating to safety and health. The primary legal references are Section 19 of the Occupational Safety & Health Act (OSHA) of 1970 (29 USC 668), 29 CFR Part 1960, and Executive Order 12196 of February 26, 1980.
- 2) The Parties agree that safety is a collective effort and a responsibility of the Employer, the Union, and all employees.
- 3) If injury or occupational disease is suffered in the performance of duties and comes within the purview of the Federal Employees Compensation Act (FECA), an employee is entitled to all necessary medical services, appliances, and supplies at government expense in accordance with the regulations governing the Office of Worker Compensation Program (OWCP).
- 4) The Employer agrees to make provisions and accommodations as necessary for emergency/first aid treatment for job-related injury and/or illness which occurs during the employee's duty hours (which may include exposure to hazardous substances). The employee will complete FECA reports of injury or illness, unless incapacitated, in which case their supervisor will file the reports. The Union President, or designated representative, may have access to records and information the Employer is obligated to maintain per Part I of 29 CFR 1960, excluding personal medical records.

#### Section B.

- 1) The base Environmental Safety and Occupational Health (ESOH) Council is delegated the authority to make decisions on safety and health matters, and operate in accordance with 29 CFR 1960, Subpart F.
- 2) The base ESOH Council functions shall include:
  - a) Monitoring compliance with the Occupational Safety and Health Act.
  - b) Reviewing safety suggestions, lost-time accidents, health hazard reports, and progress on abatements thereof.
  - c) Promoting safety and health education of employees.
  - d) Inspecting work sites that have been reported to have safety and health violations or problems.
  - e) The recommendation of measures to eliminate, abate, or prevent conditions hazardous to employee's safety and health.
  - f) Evaluate potential accommodation measures.
- 3) The Union president or designee(s) may attend all base ESOH Council meetings.

#### Section C. Reporting Unsafe or Unhealthy Conditions

- 1) Employees are encouraged to report unsafe or unhealthy conditions to their supervisor first, in an effort to resolve the problem as quickly as possible. However, this does not diminish the right of the employee to file a formal complaint or request for accommodation. Alternatively, employees may report unsafe or unhealthy conditions to the base Safety Office, State Safety office, or Accommodations manager.
- 2) Completion of AF Form 457 is the preferred method for alerting the Employer of unsafe or unhealthy conditions, and may be completed by a Union Representative on behalf of any employee or group of employees.
- 3) If an employee(s) has a reasonable belief that a working condition(s) exists that creates an imminent danger of loss of life, limb, or bodily harm they shall immediately report the situation to the nearest available supervisor. The employee(s) may be assigned other work until an investigation by the base Safety Office has been conducted. The Union president or designee will be offered the opportunity to accompany the base Safety Office during the investigation.
- 4) The Employer agrees to make a prompt response to reports of unsafe or unhealthy conditions. Whenever the Employer determines that an unsafe or unhealthy condition exists, they shall prominently post notices at or near the location until the condition has been corrected.
- 5) If the Employer cannot abate such conditions within 15 calendar days, they shall develop an abatement plan with a timetable and a summary of interim corrective measures. Employees exposed to such conditions shall be informed of the abatement plan and advised as to measures that should be taken to safeguard their health. The Employer will provide tools, protective equipment, or other materials or training necessary to safeguard the employees' health.

#### Section D. Training

- 1) Whenever employees are required to perform duties that involve real or potential hazards, training to perform the job safely will be provided in accordance with existing laws and regulations. As determined appropriate by the Employer, employees required to perform such duties will be supervised until such training is completed and the employees have demonstrated a mastery of the training.
- 2) All training provided per this section will be on official time.

#### Section E. Personal Protective Equipment (PPE)

- 1) The Employer will provide protective clothing and equipment required by OSHA, NGB, and local regulations. Should the employees choose to provide their own PPE, it will meet all OSHA, NGB, and local standards. Examples of such devices include safety glasses, hearing protection, safety toed boots, electrician's gloves, respiratory protection, bicycle helmets, and hard hats. This list is not meant to be all-inclusive.
- 2) The Employer will furnish appropriate hot/cold/wet weather clothing to employees who are required to work outside in inclement weather for extended periods of time.
- 3) Employees are required to use the protective clothing and equipment. The Employer will provide replacements as employer-issued originals wear out.

#### Section F. Miscellaneous

- 1) If an employee is injured, or becomes extremely ill while at work, and is unable to safely drive to a health care facility or to a hospital, transportation will be provided.
- 2) The Employer will provide job-specific health examinations and physicals required by regulation on official time.
- 3) The Employer will provide Safety Data Sheets (SDS) in work areas where employees use hazardous chemicals or other substances.
- 4) In the event an inspector from any Federal or State employment-related safety or health program, such as OSHA, visits the base, the Union president or designee shall be provided the opportunity to accompany the inspectors on their tour. If the inspection results from an employee filing a complaint, that employee will also be provided the opportunity to accompany the inspectors on their tour.
- 5) All employees will follow all established base safety policies (e.g. wear of seatbelt in motor vehicles, cell phone use, TAG policy on motorcycle safety wear, etc.) while operating a motor vehicle on official business.

### **ARTICLE 19**

## **DUES WITHHOLDING**

Section A. The Standard Form (SF) 1187 is used to authorize the withholding of Union dues from an employee's pay, and the SF 1188 (Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Employee Organization Dues) is used to terminate the dues withholding. SF 1187 and 1188 will be procured and made available by the Employer to both the Union and to employees upon request. Each Party is responsible for providing either form to an employee upon request.

Section B. The Union accepts the responsibility of informing its members of the provisions of this article.

Section C. The president or other authorized officer of the Union will certify on each SF 1187 that the employee is a member in good standing in the Union and will insert the amount to be withheld. The Union agrees not to change the amount of its dues more than once each calendar year. If the Union changes the amount of the regular dues, the Union Secretary-Treasurer will notify the payroll office, in writing, of the new rate and the effective date.

Section D. The Union's Secretary-Treasurer will promptly submit completed SF 1187s to the Payroll Office at the South Dakota Air National Guard. Allotments will be effective at the beginning of the first full pay period after the Payroll Office's receipt of the SF 1187.

Section E. At the close of each bi-weekly pay period for which dues deductions are made, the Payroll Servicing Official will electronically transfer to the Unions' designated bank account the dues for that pay period. A positive listing of the members and the amounts withheld will be submitted simultaneously to the Secretary-Treasurer of the Union. If a name has been dropped from the listing, the Employer will provide the Union with the listing, in writing.

Section F. A member may voluntarily revoke their allotment for payment of dues by filling out a SF 1188, obtained from AFGE Local 3035 Secretary-Treasurer or the Payroll Office. The SF 1188 will be sent to the Payroll Office. Prior to processing, the Payroll Office will contact AFGE Local 3035 Secretary-Treasurer for verification of anniversary date of SF 1187. Revocation in any case will not become effective until the first full pay period following the anniversary date of the initial SF 1187. The departing member and AFGE Local 3035 will receive a duplicate SF 1188 as notification of termination of allotments.

Section G. Dues withholding shall also be immediately terminated when an employee leaves the Unit as a result of any type of separation or transfer out of the Unit, upon the Union's loss of exclusive recognition, if the agreement providing for dues withholding is suspended or terminated by a Court or administrative authority of appropriate jurisdiction, or when an employee has been suspended or expelled from the Union in accordance with 5 USC 7115(c) or 7120. In the latter instance, the Union is responsible for providing written notification to the Payroll Office. Terminations of dues withholding per this Section will not be made retroactively.

## **ARTICLE 20**

### **ENVIRONMENTAL DIFFERENTIAL PAY/HAZARDOUS DUTY PAY**

Section A. The Employer will establish an Environmental Differential Pay/ Hazardous Duty Pay (EDP/HDP) committee that will meet as mutually agreed upon to review all situations that are presented for possible payment of EDP/HDP in accordance with the 5 CFR. The Union will be represented on the committee.

Section B. The Employer shall maintain the objective of practical elimination or reducing existing work safety hazards to the lowest possible level. When the Employer's actions do not overcome certain hazards, the action shall be submitted to the EDP/HDP Committee for consideration.

Section C. In accordance with 5 CFR 550.904 and SDNG PAM 532-550, HDP may not be paid to a general schedule employee when the hazardous duty or physical hardship has been taken into account in the classification of their position.

Section D. EDP/HDP is authorized, provided protective devices and/or safety measures do not practically eliminate the potential for injury.

Section E. Wage Board employees may be entitled to EDP pursuant to 5 USC 5343 (c) (4), and General Schedule employees may be entitled to HDP pursuant to 5 USC 5545 (d).

Section F. When an employee, the Union, or the Employer ascertains that a local work situation warrants coverage under appropriate government-wide regulations affecting EDP/HDP, the EDP/HDP Committee will be notified of the position(s), location, nature of the hazard and description of the corrective action taken to eliminate or reduce the situation and request consideration.

## **ARTICLE 21**

### **DISCIPLINARY/ADVERSE ACTIONS**

Section A. Disciplinary actions are oral admonishments or letters of reprimand. An adverse action is that action against an employee resulting in a change to lower grade, suspension or removal. Provisions of TPR 752 and TPR 752-1 will be used as a guide in all disciplinary/adverse actions.

- 1) The Employer shall conduct investigations and process disciplinary/adverse actions in a manner that protects the privacy of employees, and avoids embarrassing employees to the maximum extent feasible. All employees facing disciplinary or adverse actions will be referred to the Federal Employee Assistance Program (FEAP) manager.
- 2) The employee and/or representative may have access to evidence and supporting materials used in a disciplinary or adverse action case.

## Section B. Right to Representation during Investigations

1) A Union Representative will be given the opportunity to be present at any examination of an employee by a representative of the agency in connection with an investigation if:

- a) The employee reasonably believes the examination may result in disciplinary action being taken against them, and,
- b) The employee requests representation.

2) The employee is also entitled to have a representative of their choice, such as an attorney (at the employee's expense if required), in the event they do not want a Union Representative. The representative may advise the employee on their rights, and may ask questions and make statements.

## Section C. Employee Personnel Files

1) No derogatory materials or documents of any nature, which may reflect adversely on the employee, will be placed in the eOPF, NGB 904-1, or Supervisory Work Folder without the employee's knowledge.

2) When such documents or materials are to be entered into the eOPF, NGB 904-1, or Supervisory Work Folder, a copy will be provided to the employee. The employee will sign the Employer's copy stating that a copy was received. This signature only certifies that the employee received a copy, not that the employee agrees or disagrees with the contents of the document or other material. Such signature in no way waives or adversely affects any of the employee's rights.

3) Records of oral admonishment, reprimands, suspensions or other disciplinary actions found to be unjustified will be removed immediately from the NGB 904-1, eOPF, or Supervisory Work Folder, or any other personnel file pertaining to the employee. Such entries, complaints, and charges will not be considered or taken into account in connection with any subsequent disciplinary or personnel-related actions, such as a promotion.

## ARTICLE 22

### GRIEVANCE PROCEDURE

Section A. The purpose of this article is to provide a mutually acceptable method for the prompt and equitable settlement of grievances.

- 1) Many grievances arise from misunderstandings or disputes that can be settled promptly and satisfactorily on an informal basis at the immediate supervisor level. Employees are encouraged to informally discuss issues of personal concern with their supervisors at any time. Every appropriate effort shall be made by the Parties to settle grievances at the lowest possible level.
- 2) Dissatisfactions and disagreements arise occasionally among people in any work situation. The filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, performance, loyalty, or desirability to the South Dakota Air National Guard.
- 3) The procedures contained in this article shall be the sole procedure available for the resolution of grievances of Bargaining Unit Employees, except as provided in Sections C and D of this article. The Union and the Employer and all Bargaining Unit Employees shall be entitled to use the procedures contained herein. The procedure will not be available to any employee outside the bargaining unit.

Section B. Definition of Grievance. A grievance means any complaint:

- 1) By any Bargaining Unit Employee concerning any matter relating to the conditions of employment of the employee,
- 2) By the Union concerning any matter relating to the conditions of employment of any Bargaining Unit Employee, or,
- 3) By any Bargaining Unit Employee, the Union, or the Employer concerning:
  - a) The effect or interpretation or a claim of violation of any provision of this contract, or,
  - b) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation, which affects conditions of employment for Bargaining Unit Employees.

Section C. Exclusions. The following matters are excluded from the grievance procedures.

- 1) Any claimed violation of Subchapter III, 5 USC 73, relating to prohibited political activities.
- 2) Retirement, life insurance, or health insurance/benefits.
- 3) A suspension or removal under 5 USC 7532 relating to National Security.
- 4) Any examination, certification, or appointment per 5 USC 7121.

- 5) The classification of any unit position, which does not result in the reduction in grade or pay of a Unit Employee.
- 6) Decisions pertaining to reductions in force, removal, separation, or an adverse action involving discharge from technician employment, suspension, furlough without pay, reduction in rank or compensation, taken pursuant to 32 USC, Section 709 (f).
- 7) Performance Appraisal Appeals are specifically excluded from the Negotiated Grievance Procedure.
- 8) Issues with an EO basis related to race, religion, color, national origin, sex (including sexual harassment), Genetic Information Nondiscrimination Act (GINA), disability, or reprisal for past EEO complain activity.

Section D. Relationship to Statutory Appeals. The following actions may be appealed under statutory appeal procedures:

- 1) Discrimination for or against a unit employee on the basis of race, color, religion, gender, national origin, age, genetic information, disability, or on the basis of sexual harassment.
- 2) Prohibited personnel practices per 5 USC 2302 (b) to the extent not in conflict with 32 USC 709.

Section E. Representation Rights. A grievance may be undertaken by the Union, an employee, a group of employees or by the Employer. Only the Union or a representative approved by the Union may represent employees in such grievances. However, any employee or group of employees may personally present a grievance and have it adjusted without representation by the Union provided that the Union will be permitted to attend all formal discussions during the grievance process. In exercising their rights to present a grievance, employee representatives will be unimpeded and free from restraint, coercion, discrimination, or reprisal.

Section F. Official Time. Refer to Article 7, Section F of this contract. For the purposes of this article, official time will be granted to both the grievant and the Union Representative to prepare a grievance and present it to the Employer at any of the steps of the negotiated grievance procedure as well as for preparation and presentation of their case at arbitration.

Section G. Procedural Steps-Grievances.

Most misunderstandings, complaints or grievances should be settled in an informal manner indicated in the first two of the following steps:

- 1) Step 1. The complaint or grievance will be made in writing and then informally discussed with the first level supervisor involved within twenty (20) workdays after the incident or action occurs or from the time the employee could reasonably be expected to become aware of the incident or action. The first level supervisor will provide a written decision within ten workdays after receipt.

Ongoing conditions can be grieved at any time.

- 2) Step 2. If a satisfactory settlement is not reached in the first step, the complaint or grievance may be submitted in writing within ten (10) workdays of the first reply to the second level

supervisor. The second level supervisor will investigate the complaint and have an informal conference with the aggrieved employee, Union Representative and the first level supervisor involved. The second level supervisor will give his/her decision in writing within a maximum of ten (10) workdays after receiving the grievance.

3) Step 3. If a complaint is not adjusted to satisfaction after the informal procedure and further consideration is necessary, the complaint or grievance may be processed in writing as a formal grievance. The employee may, within five (5) workdays from receipt of the second level supervisor's decision, submit the grievance to the third level supervisor. The third level supervisor will review the grievance, confer with the first and second level supervisors, the employee, the Union Representative and provide his/her written decision within fifteen (15) workdays after receipt of the grievance.

4) Step 4. If the grievance is not settled at the third level of supervision, the employee may, within five (5) workdays from receipt of the third level supervisor's decision, submit the grievance to the base commander. The base commander will review the grievance, consult with the supervisors concerned, the employee, the Union Representative, and provide the employee a written decision within fifteen (15) workdays after receipt of the grievance.

5) Adjustment. If the grievance is not satisfactorily adjusted after the informal and formal procedures, the grievance may be submitted through channels to The Adjutant General or for a hearing by an impartial grievance examiner. In the case of a request for a hearing examiner, the Union and Employer will mutually agree upon the selection of the impartial hearing examiner to be selected from a list of NGB approved hearing examiners. The hearing examiner will hear the complaint, employee(s), supervisors and witnesses concerned and examine evidence presented. A Union official will be present during the hearing. Upon completion of the hearing, the hearing examiner will submit the record of the hearing and his/her recommendations to The Adjutant General. Within ten (10) workdays of receipt of the Examiner's report, The Adjutant General will notify the employee(s) concerned and the Union of his/her decision and recommendation in writing, enclosing a copy of the hearing transcript or report. If the aggrieved employee(s) is dissatisfied with the decision, the aggrieved employee(s) may request the Union to refer the grievance to arbitration in accordance with the provisions of this agreement. A request for arbitration shall be valid only if signed by the Union president or acting (vice) president.

#### Section H. Meaning of Time Limits

1) All time limits in this article may be extended by mutual consent. Failure of the Employer to observe the time limits shall entitle the employee to advance the grievance to the next step. Failure of the employee to observe the time limits will cancel the grievance.

2) If any time limit falls on a Saturday, Sunday, holiday, or non-workday on a compressed or part-time work schedule, the time limit will be extended to the close of business of the next workday.

3) A grievance or invocation of arbitration shall be considered filed when it is personally delivered to the office which is to receive it, or when it is postmarked.

Section I. Referral to Arbitration. Only the Union president or The Adjutant General (or their designees) can invoke arbitration. Arbitration must be invoked within twenty (20) calendar days of the final decision provided by the other Party in accordance with the provisions of this article.

## ARTICLE 23

### ARBITRATION

Section A. Only the Union president or The Adjutant General (or their designees) can invoke arbitration. Arbitration must be invoked within twenty (20) calendar days of the final decision provided by the other Party in accordance with the provisions of this article.

- 1) Pursuant to 32 USC 709 grievances over matters described in 32 USC 709 cannot be taken to arbitration. The step 4 decision of The Adjutant General is final in such cases.
- 2) Any question or issue of whether a matter can be taken into court will be decided by that court.

#### Section B.

- 1) Within seven (7) calendar days from the date of the invocation of arbitration, the Parties shall meet for the purpose of selecting an arbitrator. If the Parties cannot agree, they will request the FMCS to provide a list of seven (7) impartial persons qualified to act as arbitrators. The Parties shall meet within seven (7) workdays after the receipt of such list. If they cannot mutually agree upon one of the listed arbitrators, a toss of a coin will determine which Party will first strike a name from the list, with each Party alternatively striking a name until only one name remains. This remaining person shall be the duly selected arbitrator. The Parties will promptly contact the arbitrator to make arrangements for the hearing.
- 2) Both Parties will meet to make a further attempt to resolve the grievance prior to the actual convening of the hearing or submission of the case to the arbitrator.

Section C. The Parties may mutually agree to have the arbitrator decide the case without a hearing. In this situation, each Party will submit a brief containing any and all arguments, exhibits, affidavits, etc. that they feel are appropriate. Such a decision should be made within fifteen (15) calendar days after the selection of the arbitrator, and the briefs will be submitted to the arbitrator within thirty (30) calendar days of the decision to proceed without a hearing. The arbitrator will be asked to cross-submit a copy of each Party's brief to the other Party after the arbitrator has received both briefs.

#### Section D

- 1) The arbitrator's fees and other expenses shall be borne by the losing Party. If there is no clear winner/loser, the cost of the arbitration will be divided equally between the Union and Employer. The arbitration hearing will be held, if possible, on the Employer's premises during the regular day shift hours of the basic workweek with all involved unit employees on official time.
- 2) A qualified recorder will make a verbatim transcript of all of the hearing's proceedings. A copy will be provided to each Party and to the arbitrator within fifteen (15) calendar days of the close of the hearing. All costs involved will be borne equally. Either Party can submit post-

hearing briefs. Such briefs will be submitted to the arbitrator within twenty-five (25) calendar days of receipt of the transcript. The arbitrator will be asked to cross-submit a copy of each Party's brief to the other Party after the arbitrator has received both briefs.

3) The arbitrator will be asked to render his/her decision as quickly as possible, but in any event not later than thirty (30) calendar days following the submission of post-hearing briefs.

Section E. The arbitrator's award shall be binding on the Parties and will be implemented within fifteen (15) calendar days of receipt unless either Party files exceptions with the Federal Labor Relations Authority pursuant to 5 USC 7122. Either Party may request clarification of the award. Such request will be made within seven (7) calendar days of receipt, and the arbitrator will be asked to respond within seven (7) calendar days. A Party making such a request will provide a copy to the other at the same time.

## **ARTICLE 24**

### **TEMPORARY DUTY (TDY)**

Section A. Conditions of employment and personnel policies and practices affecting employees performing TDY will be governed by the same laws, regulations and provisions of this contract as when an employee is working at home station.

#### Section B

1) The Employer may arrange for quarters, messing, and transportation prior to the employee's departure for TDY.

2) Transportation to and from messing facilities or, when such are not available, to commercial eating establishments, may be provided by the Employer. Arrangements normally will be made in advance to accommodate unusual work schedules.

3) POV travel may be requested by the employee. Approval of POV travel will be by the order approving authority. The rate for POV travel will be in accordance with the Joint Travel Regulations (JTR).

Section C. When quarters and/or messing facilities are not available per this article, the employee is entitled to the full government per diem rates which apply for the area of TDY. The Employer will ensure that each employee receives the maximum per diem they are authorized.

## ARTICLE 25

### CONTRACTING OUT

Section A. The Employer agrees to approach any contracting out issues with extreme care and caution. In most instances, equivalent or greater cost savings can be obtained by a joint effort between the Union and the Employer to study operations and to arrive at mutually agreed upon improvements in work processes.

1) The Employer will provide the Union, as soon as possible, copies and drafts of pertinent information consistent with current law, to include pre-decisional involvement IAW Executive Order 13522.

Section B. If it is then decided to contract out Unit work, the Employer shall make every reasonable effort to minimize the impact on employees. The Employer shall seek to provide for the maximum retention of Unit Employees.

1) The Employer shall consider job (re)training to allow Unit Employees who are to be displaced or reassigned to other positions within the South Dakota Air National Guard.

2) Pursuant to Office of Management Budget (OMB) Circular A-76 and this contract, briefings shall be held between the Employer and the Union to provide the Union with information on decisions affecting Unit Employees.

## ARTICLE 26

### RATIFICATION, APPROVAL, DURATION & DISTRIBUTION OF AGREEMENT

Section A. This contract is subject to ratification by the members of AFGE Local 3035. The Employer will provide a digital copy of the contract to the Union for distribution to the members for their consideration.

1) Ratification will be complete prior to execution of the contract. The Union will meet within twenty-one (21) calendar days of the final negotiation session of the contract for the purpose of voting on ratification. Ratification will be done on an article-by-article basis. The Union president will notify the Employer within twenty-four (24) hours of the ratification vote. If any articles have been denied ratification, the Parties will promptly meet to renegotiate articles denied ratification.

2) After the contract has received complete ratification by the Union, the contract will then be signed by the negotiating teams and submitted to the Defense Civilian Personnel Advisory

Service (DCPAS) of the Department of Defense (DOD) in accordance with 5 USC 7114 (c) for approval. If the review discovers any provisions that violate law or government-wide regulation in accordance with 5 USC 7114 (c), the Parties will promptly return to negotiations on only those articles containing unlawful provisions.

3) There will be no further ratification procedures on the Union's part. However, nothing in this contract shall be interpreted to restrict the Union's right to appeal any disapproval of contract language by the DCPAS to the Federal Labor Relations Authority (FLRA) or beyond, in accordance with the appropriate regulations.

Section B. This contract will remain in full force and effect for three (3) years from the effective date, which will be the date that all articles receive final approval.

1) During the term of the contract, there will be no modifications, changes, or supplements made to the contract except as follows:

a) By mutual consent at any time.

b) In order to bring the contract into compliance with changes in law, government-wide regulation, or rulings court or administrative bodies of appropriate jurisdiction (such as the FLRA).

2) Amendments or supplements to this contract will be in writing and require the same approval as described in Section A of this article.

Section C. Either Party may give written notice to the other, not more than one hundred five (105) days nor less than sixty (60) days prior to the three (3) year expiration date for the purpose of renegotiating this contract. The Parties will promptly enter into ground rules negotiations. The present contract, including any modifications or supplements entered into during its term, will remain in full force and effect during the renegotiation of said contract and until such time as a new contract is approved and in effect.

Section D. Should neither Party give notice to the other, per Section C of this article, of their intention to renegotiate this contract, the contract will be automatically renewed upon DCPAS review and approval for one (1) year. At the end of each subsequent period of the duration/term of the contract, either Party must give notice to the other, per Section C, in order to renegotiate the contract. Otherwise, the contract will continue to "roll over" for one (1) year periods.

Section E. This contract shall be terminated in the event exclusive recognition is withdrawn from the Union.

Section F. Copies of this contract will be furnished to the supervisory and management personnel responsible for administering or interpreting the contract. One issuance, not to exceed two hundred (200) copies, will also be furnished to the Union for its use. The cost of this printing will

be borne by the Employer. A digital copy of the approved contract will also be available on the Union SharePoint site.

Section G. The Parties will jointly explain the terms and provisions of this contract to all Bargaining Unit Employees and all supervisory and management personnel responsible for administering this contract.