



## **Agreement 2002**

Between

U.S. Immigration and  
Naturalization Service

and

AFGE

LOCAL 511



American Federation of Government Employees, AFL-CIO

M-542 (Rev. 06/30/02)

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**ARTICLE 1**  
**RECOGNITION**

The Employer recognizes the American Federation of Government Employees (Local 511) as the bargaining agent for all professional employees of the Immigration and Naturalization Service (INS). Excluded from the bargaining unit are special inquiry officers, non-professional employees, management officials, supervisors, employees engaged in Federal personnel work in other than a purely clerical capacity, employees engaged in administering the Statute, employees engaged in intelligence or other security work directly affecting national security, and employees engaged in investigation or audit functions related to the internal security of the Activity, as described in sections 7112(b)(1), (2), (3), (4), (6) and (7) of the Statute.

**ARTICLE 2**  
**EFFECT OF LAW AND REGULATION**

- A. In the administration of all matters covered by this Agreement, the parties are governed by existing or future laws and by government-wide rules or regulations that are in effect on the effective date of this Agreement. In the administration of this Agreement, should any conflict arise between the terms of this Agreement and any present or future laws, provisions of such laws shall supersede conflicting provisions of this Agreement.
- B. Should any conflict arise in the administration of this Agreement between the terms of this Agreement and any government-wide rule or regulation, such as the Code of Federal Regulations, or Department of Justice Orders, Policy Letters, Manuals (other than a rule or regulation implementing 5 U.S.C. § 2302), issued after the effective date of this Agreement, the terms of this Agreement will supersede and govern.
- C. In any conflict between the terms of this Agreement and any provision of Service Orders, Policy Letters, Manuals, etc., regardless of date of issuance, the terms of the Agreement will govern.
- D. Should any part of this Agreement or any provision or provisions contained herein be rendered or declared invalid by reason of any of the contingencies referred to in this Article, such invalidation of such provision or provisions of this Agreement shall not invalidate those unaffected parts or provisions contained in this Agreement and they shall remain in full force and effect.
- E. The requirements of this Article shall apply to all supplemental, implementing, subsidiary or informal agreements between the parties.

- F. In a number of the provisions of this Agreement, statutes or regulations are restated for the convenience of the parties and the employees covered by the Agreement. In restating the provisions of such statutes and regulations, some minor changes to the statutory and regulatory language have been made for clarity or to place that language in context. These wording changes are not intended to change the meaning of the language in question. However, should there be any conflict between the language of this Agreement and the language of applicable statutes, or regulations in effect at the time the Agreement became effective, the language of the statutes and regulations is controlling.
- G. It is the intent of the parties that should there be any conflict between this Agreement and any INS policies, procedures, rules or regulations, including local office practices, personnel policies and procedures, or matters affecting conditions of employment, this Agreement shall take precedence, to the extent permitted by law.

## **ARTICLE 3**

### **EMPLOYEE RIGHTS**

#### **Section 1. Employee Rights**

Employees covered by this Agreement 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.

- A. Except as otherwise provided in the Civil Service Reform Act of 1978 (5 U.S.C. Chapter 71), such rights include the right –
1. 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
  2. To engage in collective bargaining with respect to conditions of employment through the Union as provided by law and this Agreement.
- B. Nothing in this section, or this Agreement, authorizes participation in the management of a labor organization by a management official, a supervisor, or a confidential employee, except as specifically provided in the Civil Service Reform Act of 1978 (5 U.S.C. Chapter 71), or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

## **Section 2. Prohibited Personnel Practices**

Employees are protected by law from prohibited personnel actions. The law provides that any employee of the INS who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority:

- A. Discriminate for or against any employee or applicant for employment:
  - 1. On the basis of race, color, religion, sex, or national origin, as prohibited under § 717 of the Civil Rights Act of 1964;
  - 2. On the basis of age, as prohibited under §§ 12 and 15 of the Age Discrimination in Employment Act of 1967;
  - 3. On the basis of sex, as prohibited under § 6(d) of the Fair Labor Standards Act of 1938;
  - 4. On the basis of handicapping condition, as prohibited under § 501 of the Rehabilitation Act of 1973, as amended;
  - 5. On the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation.
- B. Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of –
  - 1. An evaluation of the work performance, ability, aptitude or general qualifications of such individual; or
  - 2. An evaluation of the character, loyalty, or suitability of such individual.
- C. Coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity.
- D. Deceive or willfully obstruct any person with respect to such person's right to compete for employment.
- E. Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.
- F. Grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the

requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

- G. Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in Title 5 of the United States Code) of such employee if such position is in the INS in which such employee is serving as a public official (as defined in Title 5 of the United States Code) or over which such employee exercises jurisdiction or control as such an official.
- H. Take or fail to take personnel action with respect to any employee or applicant for employment as reprisal for –
  - 1. Any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences --
    - a. A violation of any law, rule, or regulation; or
    - b. Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or
  - 2. Any disclosure to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences –
    - a. A violation of any law, rule, or regulation; or
    - b. Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs;
- I. Take or fail to take any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation.
- J. Discriminate for or against an employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others, except that nothing in this subsection shall prohibit the Employer from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States.
- K. Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning the merit system principles contained in the Civil Service Reform Act of 1978.

### **Section 3. Information to Congress**

Nothing in Section 2 above shall be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

### **Section 4. Equal Employment Opportunity**

- A. Nothing in Section 2 above, shall be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under --
1. Section 717 of the Civil Rights Act of 1964 prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
  2. Sections 12 and 15 of the Age Discrimination in Employment Act of 1967, prohibiting discrimination on the basis of age;
  3. Under § 6(d) of the Fair Labor Standards Act of 1938, prohibiting discrimination on the basis of sex;
  4. Section 501 of the Rehabilitation Act of 1973, prohibiting discrimination on the basis of handicapping condition; or
  5. The provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

### **Section 5. Selection of Complaint Procedure**

- A. An employee aggrieved under Section 4 above, may raise the matter under a statutory procedure or the grievance and arbitration procedure provided in this Agreement, but not under both.
1. An employee shall be deemed to have exercised his or her option under this section at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a written grievance under the provisions of this Agreement, whichever occurs first.
  2. The selection of the negotiated grievance procedures contained in this Agreement to process a complaint of discrimination shall in no manner prejudice the right of an aggrieved employee to request the Merit Systems Protection Board (MSPB) to review the final decision in the case of any personnel action that could have been appealed to the MSPB or where applicable to request the Equal Employment Opportunity Commission (EEOC) to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the EEOC. Appeals to

the MSPB or the EEOC shall be filed pursuant to such regulations as the MSPB or the EEOC may prescribe.

3. Except as provided in subsection 2 above, an employee may only file his or her complaint under the grievance and arbitration provisions contained in this Agreement.

### **Section 6. Private Discussions**

Any discussions with individual employees concerning counseling, evaluations, workload review, or disciplinary actions will be conducted so as to ensure the privacy and dignity of the employee.

### **Section 7. Voluntary Programs**

The Employer agrees that participation in the Combined Federal Campaign, United States Bond Drives, Blood Donor Drives, and other worthy programs will be on a voluntary basis.

### **Section 8. Gifts**

Contributions for gifts for supervisors, management officials or fellow employees will be strictly voluntary and in compliance with the ethics program.

### **Section 9. Personnel Communications**

- A. An employee has the right to communicate with the appropriate member of the following offices concerning individual personnel matters:
  1. The servicing personnel office;
  2. The EEO Office or the EEO Officer;
  3. A supervisor or management official of a higher rank than the employee's immediate supervisor;
  4. EEO Counselors; and
  5. The appropriate official in the Health and Safety Office.
- B. Employees are encouraged, but not required, to initiate such individual personnel matters with first-line supervisors and to follow the chain of command where appropriate.

### **Section 10. Maintenance of and Access to Official Records**

- A. Official Personnel Folders (OPF) and Employee Performance Folder (EPF) will be maintained in accordance with applicable laws and regulations. Only information authorized by law or regulation will be maintained in the OPF/EPF.



- B. Each employee and/or a formally designated representative may review and request copies of any document(s) in the OPF/EPF. The Employer will explain, in writing, any denial.
- C. No record, file or document filed in the OPF/EPF that is not available to the employee or his or her representative for inspection will be made available to any unauthorized person for inspection or photocopy. Such information will be made available to any authorized person only for official use.
- D. Requests for access to OPF or EPF shall be made in writing through channels to the servicing Human Resources Office. The review of the OPF or EPF will normally take place at the requesting employee's place of assignment. Where this is not feasible it will take place at a site mutually agreed upon by the employee and/or Union representative and the Employer.
- E. No derogatory material of any nature that might reflect adversely upon the employee's character or INS career will be placed in his or her OPF or EPF without his or her knowledge.

## **ARTICLE 4**

### **MANAGEMENT RIGHTS**

#### **Section 1. Statutory Rights**

Nothing in this Agreement shall affect the authority of any INS official:

- A. To determine the mission, budget, organization, number of employees and internal security practices of the INS; and
- B. In accordance with applicable laws:
  - 1. To hire, assign, direct, lay off and retain employees in the INS, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
  - 2. To assign work, to make determinations with respect to contracting out and to determine the personnel by which INS operations shall be conducted;
- C. With respect to filling positions, to make selections for appointment from:
  - 1. Among properly ranked and certified candidates for promotion: or
  - 2. Any other appropriate source; and
- D. To take whatever action may be necessary to carry out the INS mission during emergencies.

## **Section 2. Permissive Rights**

Nothing in this Agreement shall preclude the Employer and the Union from negotiating:

- A. At the election of the Employer, on the numbers, types and grades of employees or positions assigned to any organizational subdivision, work projects, or tour of duty, or on the technology, methods and means of performing work;
- B. Procedures which the Employer 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 the Employer.

## **ARTICLE 5 UNION RIGHTS**

- A. The Employer recognizes Local 511, AFGE (hereinafter, the Union) as the exclusive representative of all employees described in Article 1 of this Agreement. The Union shall have all such rights and be subject to all such limitations as provided by law and the Union is entitled to act for and to negotiate agreements covering all employees in the unit. The Union is responsible for representing the interest of all employees in the unit without discrimination, without regard to labor organization membership.
- B. The Union shall be given the opportunity to be represented at 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 practice or other general condition of employment.
- C. The Union representative will receive reasonable advance notice of such formal discussions. The Union will receive copies of documents supplied to employees at the time of the discussion. Except in circumstances in which an urgent operational need to act quickly requires a shorter period or a shorter period is mutually agreed to by the parties, reasonable notice will mean not less than 24 hours.
- D. The Union shall have the right to present its views, either orally or in writing, to the Employer on any matters of concern regarding personnel policies and practices and matters affecting working conditions.
- E. Except as limited elsewhere in this Agreement, it is agreed that all matters affecting conditions of employment of employees are appropriate subjects for consultation and, where required by applicable law, negotiations between the parties. These matters may include, but

are not limited to, labor-management cooperation, employee and career development, promotion plans, position classification programs, and methods of adjusting grievances.

## **ARTICLE 6**

### **STATUS OF EMPLOYEE REPRESENTATIVES**

- A. The Employer shall not impose any restraint (except as may be otherwise provided in this Agreement), interference, coercion, or discrimination against employees in the exercise of their rights to organize and designate representatives of their own choosing for the purposes of collective bargaining, the presentation of grievances, appeals from adverse actions, Labor-Management Relations, or upon duly designated employee representatives acting on behalf of an employee or group of employees within the bargaining unit.
- B. A reasonable number of stewards may be designated by the Union or its affiliated Locals and shall be recognized as employee representatives for employees in the District, or other INS facility in which they are designated to be stewards. The Union will supply the Employer with their names, which may be posted on appropriate bulletin boards. It shall be the duty of the Union to notify the Employer of any changes in the roster of stewards.
- C. Upon request and approval in advance, Union officials are authorized to perform and discharge the duties and responsibilities which may be properly assigned to them under the terms of the Civil Service Reform Act of 1978 by the Union in accordance with this Agreement and any supplemental agreement or agreements hereunder. The Employer agrees that there shall be no restraint, interference, coercion, or discrimination against a Union official because of the performance of these duties while they are serving as Union officials. Union officials shall be relieved from official duties during the period they are serving as Union officials. This does not preclude employees being called back to their official duties when there is an immediate need for their services. Nothing shall require a Union official to take official time at an INS location unless required by the representational duties performed and/or required by the official duties from which the employee is relieved.
- D. It is incumbent upon the Union to furnish the Employer written notice of the names of the Union officials and to advise the Employer of any changes in its list of designated Union representatives. The Employer will advise new unit employees or employees transferring between stations, upon entering on duty, of the name of the local steward.

## ARTICLE 7

### USE OF OFFICIAL TIME

#### Section 1. Authorized Uses

Upon request, and approval, Union officials or designees may use a reasonable amount of official time to conduct representational functions where such is authorized pursuant to, and consistent with, applicable statutes, regulations, and Executive Orders relating to complaints, grievances, appeals and other matters involving dealings with INS officials. A reasonable amount of official time will be authorized for:

- A. Representation. Representation in grievances, discrimination complaints and appeals.
- B. Grievances.
  - 1. Preparation and presentation of grievances under Article 22, including allegations of discrimination.
  - 2. After arbitration has been invoked in accordance with this Agreement if a Union representative is designated to present the grievant's case, he or she will be authorized a reasonable amount of time to prepare for arbitration. Should the hearing be continued, the designated representative will be granted a reasonable amount of preparation time for each additional scheduled hearing day.
  - 3. Prior to filing an unfair labor practice charge with the Federal Labor Relations Authority, Union representatives will, in an effort to resolve the issue, discuss the complaint with local managers. The Union representative may be authorized up to a maximum of four (4) hours to prepare an Unfair Labor Practice (ULP) charge. Union officials shall not knowingly file a grievance or a ULP charge concerning the implementation of a policy or procedure agreed to by the Local President and the Employer at the national level.
- C. Labor-Management Meetings. For representation of the Union in Labor-Management meetings with the Employer pursuant to this Agreement. Union representatives shall be authorized up to three (3) hours for preparation prior to each meeting.
- D. Arbitrations & Appeals. For representation at arbitrations and statutory appeal hearings.
- E. Adjustment of Grievances. Representation at adjustment of grievances, adverse actions and any EEO matters that affect the bargaining unit.
- F. Committee Meetings. Attendance at Employer-initiated committee meetings as the designated Union representative.

- G. Respond to the Employer. Review of and response to memoranda, letters, and requests from the Employer, as well as proposed new instructions, manuals, notices, etc., which affect personnel policies, practices or working conditions.
- H. Technical Representative. To act as a technical advisor or an assistant employee representative in hearings. The technical representative will be granted up to eight (8) hours official time to prepare for the hearing. There shall be a limit of one representative so designated at a proceeding. The Union will be responsible for any travel and per diem associated with the travel of the technical representative.
- I. Observer. To attend hearings or meetings in the capacity of an observer where bargaining unit employees have elected to pursue a grievance without Union representation.
- J. Respond to Congress. Upon request by a Member of Congress, respond to requests for information and/or testify before Congress.
- K. Partnership. To participate in Labor-Management Partnership proceedings and endeavors.
- L. EEO Briefings. To participate in status briefings of the Employer's Equal Employment Opportunity (EEO) program.
- M. Safety and Health Committee Meetings. To participate in National Safety and Health Committee Meetings; or
- N. Other Meetings with the Employer. Any other meeting scheduled by the Employer with the intent of meeting with the Union as general representative of the bargaining unit for the purpose of obtaining the Union's views or offering the Employer's views on the operation of a policy or program (excluding grievance representation, complaints, appeals, negotiations, etc.) will be authorized travel expenses and per diem. Necessary time for travel will be allowed.
- O. Additional Uses. Approval of official time for appropriate Union representational activities other than those specified above will be subject to review.

## **Section 2. Treasurer**

The Treasurer is authorized two (2) hours per pay period to prepare and complete reports. An additional 40 hours is authorized at the end of the Union's fiscal year (December 31) to file required reports and tax returns. There is no carryover of time from year-to-year.

### **Section 3. Required Procedures**

- A. Advance Notice. All Union officials will make every effort to schedule use of time and give advance written notice to the Employer in accordance with this Section. Requesting Union officials will inform the immediate supervisor by way of a completely filled out Form G-826, including among other matters, the nature of the duties to be performed and will indicate on the form the estimated amount of time to be used and the object class code to which the time is to be charged.
- B. Form G-826 Procedures.
1. The Employer will furnish a Form G-826, which shall be used by all Union officers to request official time pursuant to this Article. The Union officer will prepare the form completely pursuant to this Article and submit the form to the appropriate supervisor in duplicate. The supervisor will endorse the form indicating approval or denial, retain one copy and return one copy to the requester. If the request is approved, the Union officer, upon completion of the authorized activity and at the time of his or her return to duty; will advise his or her supervisor, either orally or in writing, as to the date and time of his or her return to duty and total number of hours used.
  2. The supervisor will then note on his or her copy of the original request to reflect the total time (hours/dates) used and insure that such time is appropriately recorded on the Union officer's time and attendance report. The supervisor will also, at that time, forward a copy of the G-826 to the appropriate servicing Human Resources (LMR) Office. The Union official shall not be required to identify a grievant at any stage of an Article 22 grievance, but shall be required to identify the issue being considered. The Union official must identify his or her place of contact or telephone number at all times pursuant to this Article.
  3. Requests for official time will be acted upon in a timely manner. Adjudication of the request in a timely manner will mean 24 hours or less on consecutive weekdays, excluding weekends or holidays from the time that a properly completed request is submitted to an appropriate management official. The Employer will take into consideration the time constraints the Union official may be operating under. Should an occasion arise when a request must be denied, in whole or in part, the Employer will cite the reason for the denial on the official time request form. Reasonable efforts will be made to reschedule or accommodate a denial.
- C. Supervisory Approval. The Union representative shall also obtain approval of the employee's supervisor for any meeting during the employee's duty time.
- D. No Internal Union Business. In no case will internal Union business such as solicitation of dues, maintenance of the dues check-off agreement, or solicitation of membership be conducted on official time.

#### **Section 4. Restriction on Official Time**

- A. The use of official time for representational activities is to be performed during normal duty hours. However, it does not authorize official time during normal duty hours for the following activities:
1. Internal Union Business. Conduct of internal Union business for which Union officials shall charge their time to annual leave or leave without pay.
  2. Leave. Activities for which the employee would normally be required to charge his or her time to annual, sick or other appropriate leave if he or she were not a Union officer (e.g. annual leave for a vacation or sick leave for an illness).
  3. Recall to Duty. Notwithstanding the provision of this Section, the Union officials may be assigned official duties in situations of emergency.

#### **Section 5. Travel Time**

Union representatives shall be granted reasonable and necessary travel time for the purpose of traveling to assist in representing an employee.

#### **Section 6. Administrative Time for Training**

- A. Limits. The Employer agrees that a reasonable amount of official time may be administratively authorized for Union officials/representatives to attend training approved by the Employer which is designed to advise representatives on matters within the scope of Civil Service Reform Act of 1978 and Title 7, which are of mutual concern to the Employer and the Union.
- B. Procedures. Requests for such official time to attend training shall be submitted to the appropriate management official and a copy as well to the Headquarters Labor and Employee Relations Policy Section together with an agenda that includes the actual hours that training will be conducted. Requests shall be received in writing from the Union at least 15 working days in advance of the date the training is scheduled to commence. The Employer shall notify the Union of its decision no later than 10 working days after receipt of the request.

#### **Section 7. Arbitration Travel and Per Diem**

The Employer will pay travel and per diem costs for the nearest designated arbitration representative. The Union will designate geographically diverse representatives for arbitration proceedings.

## **Section 8. Travel and Per Diem for Union Representatives**

Union representative official time and travel and per diem provisions of this Agreement shall normally apply only to designated Union representatives. However, it is also understood that the Union may from time to time designate other employees to represent its interests and to participate in labor management meetings, partnership activities, or any other meetings called by the Employer. The Employer will pay like expenses and grant official time for necessary witnesses required for any litigated matter as determined by the hearing officer or arbitrator. All such employees as mentioned in this Section shall be authorized official time, travel and per diem as necessary for participation in such activities consistent with the needs of the Employer. The Union shall make every practicable effort to rely on employees who are locally available for participation in such activities.

## **ARTICLE 8**

### **FACILITIES, SERVICES, AND ACCESS TO EMPLOYEES**

#### **Section 1. General**

National and Regional representatives of the AFGE and Local shall normally be permitted upon all INS installations. It is understood that such Union representatives shall, give advance notice to the supervisor in charge of the installation of their impending visit. If the supervisor cannot approve the visit for valid operational reasons, the supervisor will make an alternative arrangement for the official. Upon arrival, he or she shall advise the supervisor of his or her presence. Such representatives shall not interfere with the work of employees of the installation during duty hours. Reasonable access to electronic and telephone facilities will be provided.

#### **Section 2. Bulletin Boards**

- A. Each Employer installation will provide for the Union's exclusive use a dedicated bulletin board space in a place of prominence not ordinarily frequented by the public and reasonably accessible for posting material published by the Union.
- B. In each office facility with more than 50 bargaining unit employees, the Employer will provide to the Union for its exclusive use one locked bulletin board (of approximately 3x4 feet). The bulletin board will be permanently attached to the walls where building regulations permit such permanent installations. Subject to mutually acceptable space and within landlord requirements, the Union may install, at its own expense, a bulletin board of up to 3x5 feet in addition to the bulletin board supplied by the Employer.
- C. A designated and recognized Union official, including authorized or deputized stewards shall sign all material before posting on the bulletin board. Such bulletin board shall be in an employee high traffic and visibility area out of public view, such that all bargaining unit employees may have easy access. The key shall be the sole possession of the Union.



- D. Material that does not violate any law, contain libelous material or personal attacks may be posted on Union bulletin boards.
- E. The Union will be afforded the installation and continued availability of an electronic bulletin board on the Employer's electronic mail system. The Union accepts that all Union material is subject to control and administration by the Office of Information Resource Management.

### **Section 3. General Union Meetings and Meeting Space**

- A. Upon reasonable advance request by the Union, the Employer will provide meeting space, if available, in areas occupied by the Employer for meetings during non-duty hours. The Union will comply with all security, safety and housekeeping rules in effect at that time and place.
- B. Nothing in this section shall be construed as permitting meetings or the use of Employer supplied equipment during duty time for the purpose of conducting internal Union business.
- C. Employees attending meetings under subsection B above will do so only during non-duty hours, for example lunch time or while they are in a leave status.
- D. Upon reasonable advance request by the Union, the Employer will provide confidential meeting space, if available, during official hours of business, in areas occupied by the Employer, for the following purposes:
  - 1. Preparing or discussing a grievance or appeal;
  - 2. Caucusing immediately before, after, and during scheduled meetings with the Employer;
  - 3. Discussing matters directly related to the administration of this Agreement; or
  - 4. Matters relating to the Union's representation of employees.
- E. Upon reasonable advance request, mutually agreed upon space will be provided, if available, by the Employer to be used in conjunction with elections governed by Local by-laws. Space will be made available for the ballot box for the duration of the election period. The Union will comply with security and housekeeping rules in effect at that time and place. The Union acknowledges that no responsibility for the safety or security of the ballot boxes is assumed by the Employer.

### **Section 4. Photocopying**

Except for internal Union business, the Employer agrees to provide the Union with the use of photocopying equipment. For more than *de minimis* tasks, the Union agrees to supply its own paper and request approval from the Employer.

## **Section 5. Use of Communication Equipment**

- A. Union officials are authorized the use of the Employer's electronic mail system for representational purposes. The parties agree that internal Union business is prohibited when using the Employer's electronic mail system. Union officials should be mindful of the fact that electronic mail messages are considered government records that may be accessed whenever a legitimate governmental purpose exists for doing so.
- B. The Employer agrees that the Union has the right to transmit intra-Union affairs by electronic means to and from its members. As such, the Employer will not interfere with the reasonable access of the Union to the Employer's internal mail system (electronic mail and facsimile transmissions), and will not inquire of the content of Union communication. The Employer will make no effort to gain purposeful knowledge of the content of such communications.
- C. Each steward will be afforded reasonable use of government telephone facilities, the moderated use of copying machines, and facsimile machines.
- D. Telephones will be made available on a reasonable basis to Union officers to conduct Union representational activities.
- E. The Union and Employer agree that the uses described in A, B, C and D above will be solely for proper and legitimate, representational Union purposes, and, as such, the Employer will make no effort to gain purposeful knowledge of the content of such communications. It is also understood that bargaining notices and demands are not to be served by facsimile transmissions unless the receiving party expressly consented to such means of service in regard to the particular matter at issue.

## **Section 6. Computer Resources and Reference Materials**

- A. Access to the Employer's administrative manuals, memoranda, procedures, etc., shall be available through the INS Intranet or INSERTS.
- B. The Employer agrees that the ordinarily available attorney research tools, including Westlaw, may be used by the Union for representational purposes provided there is no additional cost to the Employer.
- C. Wherever the Employer maintains reference material (for example, Interpreter Releases, Broida Law & Practice, CCH), this material will be made accessible for shared use.

## **Section 7. Orientation**

Each new hire employee, as part of his or her orientation, will be given a 15-minute presentation by the local Union representative. The Union representative will be invited to attend and will be in a duty status. The Union representative will cover only the labor relations law, the provisions of this Agreement, and Union/Management Agreements. No recruiting or other internal Union business may be conducted during the orientation.

## **Section 8. Personnel Roster and Telephone Directory**

- A. INS Headquarters will furnish to the Union, for its internal use only, a list that will contain the names, grades, position title, accessions/separations, and posts of duty of all employees in the bargaining unit. This list will first be supplied within one month after this Agreement becomes effective and semi-annually thereafter upon the request of the Union. The parties recognize that errors may occur from time-to-time in regard to input and coding of data, and that the listings will not be construed as action by the Employer to unilaterally deny bargaining unit status to any employee, or to confer it.
- B. The Employer agrees to include a separate page listing in the attorney telephone directories of the following: the names, office locations and addresses, and office telephone numbers of all officers and stewards of the Union. The Union agrees to provide a listing of Union officials on a regular and timely basis.

## **Section 9. Union Office Space**

The parties agree that the Union representatives shall be afforded use of their private government office space for the dual purpose of representational purposes. Where the Union representative does not have a private office, that person shall be provided a private office at the earliest possible opportunity. Further, the Union is provided, at no cost to the Union, lockable storage unit(s). Where it is economically and administratively feasible, the Employer agrees to provide, at no cost to the Union, one dedicated phone line for the Local President for a facsimile machine.

## **Section 10. Parking**

The parties agree that the Employer will endeavor to provide an increase in parking at the various INS facilities. The Employer will survey the actual disposition of parking spaces available to the INS, and will meet, confer and bargain, to the extent required by law, with the Union on the allocation, acquisition and augmentation of employee use parking.

## **Section 11. Space Reallocation**

Consistent with law and government-wide rules and regulations, the Employer will appropriately notify the Union of any space reallocation, as soon as practicable and will bargain with the Union, to the extent required by law. Space reallocation encompasses new acquisitions, relocations, expansions, contractions, consolidations or reductions of physical space that affect employee-working conditions anywhere within the INS.

## ARTICLE 9

### PDI, IMPACT AND MID-TERM BARGAINING

#### **Section 1. Notice of Proposed Change**

- A. The parties recognize that from time-to-time during the life of the Agreement, the need will arise for the Employer to change existing INS regulations covering personnel policies, practices, and/or working conditions not covered by this Agreement.
- B. The Employer and the Union are committed to the use of pre-decisional involvement (PDI) at the national level where time and circumstances reasonably allow. The parties will use reasonable efforts to resolve issues through a consultative and cooperative approach. If the parties are unable to reach an amicable settlement through PDI, the Employer will serve bargaining proposals on the Union. Where bargaining is proposed the procedures of Section 2 below will be used.
- C. If the Union intends to exercise its bargaining rights regarding the proposed change, it must submit a timely bargaining demand, in accordance with the procedures and time frames specified below. An extension of time may be granted upon mutual agreement.

#### **Section 2. Bargaining Procedures**

- A. As applicable, mid-term bargaining shall be conducted in accordance with the following procedures and time frames:
  - 1. Notice of Proposed Change. The Employer shall serve its notice of the proposed change upon the President of the Local or his or her designee. The Employer shall provide the Union, at the time of notification of the proposed change, with information that is relevant and necessary for the Union to understand the Employer's proposed change. This information will be in accord with 5 U.S.C. § 7114(b)(4).
  - 2. PDI Changes. Negotiations on PDI changes will address only those matters not agreed to during PDI.
  - 3. Demand to Bargain/Information. Within 22 workdays after being served with the notice of the proposed change, and the supporting documentation, the President of the Local, or his or her designee, shall submit a demand to bargain and proposals in writing upon the Chief, Labor and Employee Relations Policy Section, INS Headquarters, or such other person as may have been identified for this purpose in the Employer's notice to the Union. The Union may request additional information relating to the proposal. If the Union has requested additional information, amendments to the proposals shall be made within 15 workdays of receipt of the information.
  - 4. Negotiations. If, following any informal discussions, the parties are unable to reach agreement on the proposed change; they shall commence negotiations on a mutually

agreeable date and site. Absent mutual agreement on a date for bargaining, such negotiations shall commence at 9:00 a.m. on the 10<sup>th</sup> workday following the date the Employer received the Union's proposals.

5. Delays/Break. Once negotiations have commenced the parties recognize the obligation exists to bargain in good faith and will therefore avoid unnecessary delays. If a break in negotiations is necessary the parties will agree on a time and date to resume bargaining prior to any recess, whenever practicable.
  6. Bargaining Teams. Each party will inform the other of the names of its bargaining team member at least five (5) workdays before the start of any negotiations. The Union's bargaining team members will be accorded official time for all time spent in bargaining, including necessary travel time and impasse proceedings, provided that the number of such Union team members is not greater than the Employer's bargaining team. The Employer will also pay the travel and per diem expenses for such members of the Union's bargaining team.
  7. Equipment. The Employer will provide the Union bargaining team with access to office equipment as may reasonably be needed by the Union team in its negotiations with the Employer.
- B. Service of Notices and Demands. Service of all notices, requests, demands or documents provided for under this Article shall be accomplished either by personal delivery or any non-electronic means that provides proof of delivery. As applicable, time limits shall begin to run on the day after the date of the receipt of the document that triggers the particular time limit. Service will be deemed timely if the required document is either personally delivered or documented deposit within the specified time limit. The parties agree that they will act in good faith in acknowledging receipt for documents and will not attempt to evade the service of documents upon them.
- C. Good Faith. The duties of the parties to negotiate in good faith under this Article shall include the following obligations:
1. Resolve to Reach Agreement. To approach the negotiations with sincere resolve to reach agreement:
  2. Duly Represented. To be represented by duly authorized representatives prepared to discuss and negotiate on the subjects authorized by this Article; and
  3. Reasonable Times. To meet at reasonable times, as frequently as may be necessary, and to avoid unnecessary delays.
- D. Impasses. Impasses in impact and mid-term bargaining negotiations at the Local 511 level will be resolved in accord with the following:

1. Impasse During Negotiation. During supplemental negotiations for the master Agreement, impact bargaining or mid-term negotiations, when it has been determined that an impasse has been reached, the item shall be set aside. After all negotiable items on which agreement can be reached have been disposed of; the parties shall once more attempt to resolve any existing impasse item.
  2. Mediation. If such consideration does not result in the resolution of the impasse, the assistance of the Federal Mediation and Conciliation Service may be requested by either of the parties.
  3. Referral to Impasses Panel. Any impasse which remains unresolved following mediation may be referred to the Federal Service Impasses Panel in accordance with 5 U.S.C. § 7119(b).
  4. Agreements Allowed. The procedure described above shall not preclude the parties from agreeing on any issues or from entering into complete agreement with the assistance of the Mediator or the Panel.
- E. Post Implementation Bargaining. The parties agree that effective management of the INS and its resources is a mutual concern. The parties also agree that on certain occasions there is a need for expedited implementation of new policies or practices affecting conditions of employment. The provisions of this Article apply to such situations. It is understood, however, that nothing in this Article precludes the Employer and the Union from engaging in post implementation bargaining if mutually agreeable.
- F. Notification and Opportunity to Bargain. To the extent required by law and this Agreement the Union shall be given notice and an opportunity to further bargain over Employer-initiated changes in matters affecting the conditions of employment of employees, including policies and procedures, whether or not the matters are specifically addressed by this Agreement.

## **ARTICLE 10**

### **NOTICE TO EMPLOYEES**

#### **Section 1. Copy of Notice to Union Representative**

- A. An employee who receives a personally addressed notice, proposal or correspondence from the Employer concerning:
  1. An adverse action;
  2. A disciplinary action;
  3. A reduction-in-force;

4. Denial of a within-grade salary increase;
5. A fitness for duty examination; or
6. An involuntary reassignment or transfer;

shall receive an additional copy, which states at the top of the first page, "This copy may at your option be furnished to your Union representative."

## **Section 2. New Employees**

- A. All new bargaining unit employees will be informed by the Employer that the Union is the exclusive representative of employees in the unit.
- B. The Employer will also advise each new bargaining unit employee that he or she has the right, freely and without fear of penalty or reprisal, to form, join and assist a labor organization or refrain there from.
- C. Each new bargaining unit employee shall receive from the Employer a copy of this Agreement.

## **Section 3. Leave and Earnings Statements**

Each employee will be furnished, on a biweekly basis, a National Finance Center payroll earnings statement showing the employee's total cumulative earnings and total cumulative deductions from the first yearly pay period in each standard category. The notice shall also contain annual leave and sick leave balances.

## **Section 4. Work Place Injuries**

The Employer agrees to provide an employee who is injured while in a duty status with a copy of the brochure entitled, "When Injured at Work," within a reasonable time after the filing of an official accident or injury report, with no more than two (2) copies to be sent to an individual in one (1) year.

# **ARTICLE 11 DEVELOPMENT AND TRAINING**

## **Section 1. General**

- A. The Employer and the Union agree that the training and development of employees within the unit is a matter of primary importance to the parties. The Employer agrees to develop and maintain policies and programs designed to enhance the professional development of

employees. Training opportunities are not for the sole purpose of maintaining professional standards or certification.

- B. The Employer and the Union recognize that each employee is responsible for applying reasonable effort, time and initiative in increasing his or her potential value to the Employer through self-development and training.
- C. Employees are encouraged to take advantage of training and educational opportunities that will add to the skills and qualifications needed to increase their efficiency in the performance of their duties and for possible advancement in the Employer. Within 30 days of the start of each fiscal year, each employee is encouraged to submit to the immediate supervisor a desired list of elective, job-related training and/or career developmental opportunities the employee wants to participate in during the year.

## **Section 2. Training and Development Courses**

The parties agree to the following:

- A. Career Opportunities. The Employer agrees that relevant career development programs will be considered a high priority in approving courses for attendees. Such programs for the various bargaining unit employees may include trial advocacy/legal writing, auditing/accounting, library science, health sciences, architecture, and engineering courses.
- B. Time for Educational Purposes. Where the employee is attending job-related training approved by the Employer, the employee is on duty time. For other types of training, the employee may request annual leave or leave without pay.
- C. Training Records/History. The Employer will maintain a system of training records to ensure training is administered in a fair and impartial manner. The Employer will make available to the employee pertinent records should a question arise about the administration of training.

## **Section 3. Training Recommendations**

When establishing or modifying the content or structure of its training courses or programs, the Employer will offer the Union a pre-decisional involvement opportunity. The Employer encourages the Union to submit recommendations to the Commissioner or the appropriate Executive Assistant Commissioner or equivalent position concerning employee training needs and programs.

## **Section 4. Reassignment Training**

The Employer agrees that, when an employee is reassigned on the basis of management need or position abolishment, sufficient training as determined by the Employer will be given to the employee to enable him or her to perform the duties of the new position.



## **Section 5. Vendor Training**

The Employer will pay authorized expenses for vendor training at a facility approved by the Employer when the following conditions have been met:

- A. The training has been applied for and approved in advance;
- B. Such training will enable the employee to increase his or her proficiency in the current position (i.e., the training is job-related);
- C. Existing training programs within the INS will not adequately meet the training need;
- D. It is not feasible to establish a new training program to meet the need effectively;
- E. Reasonable inquiry has failed to disclose the availability of a suitable and adequate program elsewhere in government;
- F. Funds are available to pay for the training program;
- G. The course is not being taken solely for the purpose of obtaining a degree; and
- H. The approval of such training will not create undue interference with operational requirements or an imbalance in staffing patterns.

## **Section 6. Announcement and Selection for Elective Training**

- A. Absent a justified, legitimate reason, the Employer will use the following method for making employee selection for all elective, government-funded training:
  - 1. Announce training opportunities to all appropriate employees.
  - 2. Solicit volunteers.
  - 3. Select on the basis of a fair and impartial seniority rotation process as determined on a local level.
  - 4. On request, the reason(s) will be explained to the employee when the training is disapproved.
- B. Definitions.
  - 1. *Justified, legitimate reasons.* Justified, legitimate reasons include such matters as mission needs, specific office conditions, costs (direct and indirect), prior training attended, and workload.

2. *Seniority.* Seniority for attorneys is time as an INS attorney. For all other bargaining unit employees, seniority is service computation date.

### **Section 7. Insurance**

The Employer shall pay fifty percent (50%) or \$115, whichever is the lesser, of the annual premium for professional liability insurance, for all bargaining unit employees who avail themselves of such insurance.

## **ARTICLE 12 SAFETY AND HEALTH**

### **Section 1. Safe and Healthful Working Conditions**

The Employer agrees to provide safe and healthful working conditions, taking into account the mission of the INS and the inherent hazards of the job performed. The parties shall be governed by the Safety and Health Regulations contained in the INS Administrative Manual (AM) and this Agreement, except that one Union representative shall attend and participate in the National, Health and Safety Committees. The appropriate management official in the bargaining unit chain-of-command will request the participation of a Union representative on the appropriate district-level safety and health committee.

### **Section 2. Reporting of Unsafe Conditions**

- A. The Union will endeavor to have employees observe all safety rules and use all equipment and safeguards provided. In the course of performing their normally assigned work, employees will be alert to observe unsafe practices and conditions. Any employee, who believes that an unsafe or unhealthy working condition exists in any workplace where such employee is employed, has the right to report such condition to the appropriate supervisor, the facility director, the appropriate Safety and Health official, and the Union.
- B. In the case of a threat to life or danger of serious physical harm, the employee shall report the situation to the supervisor.
- C. When an employee reasonably believes that his life may be in imminent danger the employee shall desist in performing his duties and evacuate the premises to safety. The employee will make an effort to notify the supervisor before evacuation.
- D. When an employee believes he is working under conditions that are unsafe or unhealthy beyond normal hazards inherent in the operation in question, he shall refer the matter to his supervisor. The supervisor will make an evaluation of the working condition and advise the employee that the work either be continued or stopped.

- E. In the case of an immediate threat to life or danger of physical harm, local management shall take reasonable steps to ensure the protection and safety of employees, including, if necessary, the relocation of the employees to relative safety.
- F. When local management receives a report that a dangerous, unhealthy or potentially dangerous or unhealthy condition is present at a particular work site, local management shall notify the local Union official of the alleged dangerous or unhealthy condition.

### **Section 3. Unsafe Condition Move**

In the event of a relocation of an office that involves the safety or health of employees, the Union will be notified (in accordance with the Impact Bargaining and Mid-Term Bargaining provisions of this Agreement) in advance of such a move.

### **Section 4. Assistance for Handicapped Employees**

The Employer agrees to develop procedures to assure that all handicapped employees are provided appropriate assistance to evacuate buildings in case of emergencies.

### **Section 5. TB Screening**

When an employee, or the Employer, believes that the employee has been exposed to a person with active tuberculosis while in an official capacity, the Employer will refer the employee for a voluntary tuberculosis screening.

### **Section 6. Temperature and Humidity**

- A. The Employer shall take reasonable steps to assure a safe and healthful working environment, including reasonable temperature and humidity levels, appropriate physical surroundings, and reasonable space and equipment necessary to carry out official responsibilities.
- B. When the indoor temperature falls below 55 degrees or rises above 85 degrees, the Employer will take action to deal with the heating, ventilation and air conditioning (HVAC) conditions. The Employer will initiate measures to reduce the risk to employees by making reasonable efforts to first accommodate employees and then consider placing them on administrative leave. This only applies to INS owned or leased space.

### **Section 7. Environmental Safety**

- A. When the Employer conducts OSHA inspections, the Union will be afforded the opportunity to accompany the inspector in these inspections. Safety and health hazards discovered in these inspections shall be corrected as expeditiously as possible in accordance with federal requirements.
- B. The Employer will ensure that employees who are working in offices or facilities with identified safety or health hazards are made aware of such hazards, informed of safe and healthful work practices and educated in the appropriate use of those practices.

- C. Appropriate abatement procedures will be conducted pursuant to federal requirements when it is determined by a competent authority that the office and/or facility is determined to be unsafe or unhealthy.
- D. The Employer will notify the Union prior to initiating procedures for asbestos removal.
- E. The Employer will notify the Union in advance of abatement action, except where an emergency situation exists, in which case the Union will be notified as soon as possible. Asbestos abatement plans may include the discontinuance of work or the shifting of the employee work location. To the extent required by law, the Employer will meet its bargaining obligation.
- F. If air sampling indicates that the airborne concentrations of asbestos fibers exceeds regulatory levels, the Employer will notify the exposed employees in writing within five (5) days after discovery of the excessive asbestos concentration.
- G. When the Union requests information concerning health and safety issues from the Employer, the Employer will provide the requested information within 10 working days.

### **Section 8. Work Related Injuries**

- A. Reporting. Employees shall report all work-related injuries to their supervisor. The supervisor will take appropriate action to ensure that:
  - 1. The employee has the opportunity to report to the Employee Health Physician or his or her personal physician for treatment, completion of reports, etc.;
  - 2. Within a reasonable time period after the injury, arrange to have the employee counseled by trained personnel as to their right to file for compensation benefits and benefits payable;
  - 3. The employee is assisted, if necessary, in preparing forms and documents for submission to the Office of Worker's Compensation Programs (OWCP), and that employees will be informed of their rights under the Federal Employee's Compensation Act, as amended; and
  - 4. All forms are timely processed and promptly forwarded to the employee and OWCP.
- B. Return to Duty After Work Related Injury. An employee who has sustained a work-related injury or illness may be required to perform duties to the extent and limits prescribed by the treating physician or the Employee Health Physician. In the event that limited duty is not available, the employee will be placed on continuation of pay, if determined eligible by OWCP, or placed in an appropriate leave status. The Union may suggest limited duty opportunities. At an employee's request, the Union may represent the employee at any stage of this procedure.

- C. Re-Crediting Leave. If an employee is charged for sick or annual leave when he or she could have received injury compensation benefits instead, the employee may repay, in lump sum or by any other plan acceptable to his or her payroll office, the amount collected while on annual or sick leave and have his or her annual or sick balances credited accordingly, so that he or she may qualify for injury compensation.

**Section 9. Toxic Chemicals**

- A. When local management knows that hazardous chemicals will be or have been used in areas where employees work, local management shall notify the on-site Union representative as well as affected employees.
- B. Where local management is readily aware of any commercial or large-scale application of pesticides, local management will notify employees and the Union/stewards 72 hours in advance of the application. Individuals with special health needs will be reasonably accommodated.
- C. Local management agrees to notify employees and the Union/stewards, as soon as practicable, of biomedical hazards such as TB quarantine, chickenpox outbreak, toxic molds, asbestos release, and any other building/office safety or health issues. In such a situation, the Employer may offer the option of being detailed to another office or other reasonable accommodation as long as the situation exists.

**Section 10. Computer Injuries**

Within funding availability, the Employer will provide appropriate accommodation for the medically documented computer related injury.

**Section 11. Freedom from Reprisals**

Employees shall be free from restraint, coercion, discrimination, or reprisal practiced as a result of an employee exercising any provision of this Article.

**ARTICLE 13**

**TRAVEL**

**Section 1. General**

- A. Employees shall be reimbursed for travel on official business in accordance with law and the Federal Travel Regulations and interpretations thereof by the Comptroller General of the United States, interpretations of the Administrator, General Services Administration and in accordance with this Agreement.

- B. The parties agree that any change in rates or reimbursements to Federal employees by law or regulation during the life of this Agreement will be adopted on the effective dates of the changes.

## **Section 2. Definitions**

- A. *Regular duty station.* Regular duty station is defined as: 1) the work location (such as headquarters office, airport, etc.) to which an employee is assigned permanently or, 2) if 50 miles or less from the employee's official duty station, any work location to which the employee is assigned as part of a predetermined rotational schedule.
- B. *Temporary duty station.* Temporary duty station is defined as any job site that is not the employee's regular duty station. The parties agree that the definition of temporary duty station is applicable for determinations of mileage and other related travel expenses subject to reimbursement.

## **Section 3. Travel Status**

- A. To the extent practicable, the Employer shall schedule the time to be spent by an employee in a travel status away from his or her official duty station within the regularly scheduled workweek of the employee.
- B. Time spent in a travel status away from the official duty station of any employee is not hours of employment unless it satisfies the criteria specified in governing law and regulations.
- C. In cases where employees are assigned away from their regular work location and the travel time is greater than their normal commuting time, the difference in time shall be considered travel in a duty status, in accordance with 5 C.F.R. § 551.422(b).

## **Section 4. Travel Expenses and Reimbursement**

- A. It is the responsibility of employees to place themselves at their regular duty station and return there from at their own expense.
- B. After an employee places himself or herself at his or her regular duty station, the cost to the employee of any local travel required for official purposes during regular hours of work or on overtime shall be reimbursed by the Employer. In this regard, once an employee arrives at his or her regular duty station, he or she will receive mileage reimbursement for authorized use of a privately owned vehicle in subsequent travel to any temporary duty station. For purposes of this Article, "mileage" includes road and bridge tolls, ferry fares, and parking fees, as well as the authorized mileage rate for the distance traveled.
- C. When an employee travels by privately-owned vehicle from his or her home to a temporary duty station and/or from a temporary duty station to his or her home, the employee will be reimbursed for any mileage in excess of his or her normal round trip from his or her home to his or her regular duty station.

D. Per Diem.

1. Employees shall be eligible for per diem or actual subsistence allowance only when they travel to an assignment located outside their official duty station.
2. Generally, employees will not receive per diem for daily operational travel.

E. Travel Advances.

1. Travel or any extension thereof will, to the maximum extent possible, be authorized or ordered in advance in sufficient time for the employee to have in his or her possession a travel advance, if needed, prior to starting such travel.
2. Those employees who have a valid government credit card for travel purposes are to use such credit cards to obtain necessary and appropriate cash advances.

F. Although handicapped employees may be directed to perform official travel, there are situations in which the assistance of an attendant or escort must be provided if the travel is to be accomplished. Under such circumstances, the transportation and per diem expenses of an attendant will be allowed as necessary expenses for travel.

G. It is understood by all employees that in the use of government-owned or government-leased automobiles there must be no intermingling of private and public interest. Failure to utilize government-owned or government-leased vehicles for purposes which are in the interest of the government or for its benefit subjects employees to penalties.

H. The parties recognize that the current legislation prohibits premium pay. If the prohibition is repealed, the parties agree to reopen and bargain under Article 9 over the terms and conditions of premium pay working conditions, to the extent consistent with law, rule, and regulations.

## **ARTICLE 14**

### **TEMPORARY ASSIGNMENTS**

#### **Section 1. Purpose**

The parties recognize the desire to equitably select employees for temporary assignments to meet the needs of the Employer, to meet the needs of employees, and to broaden the pool of experienced employees.

#### **Section 2. Definitions**

For the purposes of this Article, the following definitions apply:

- A. *Temporary Assignment.* The change of an employee from one position, work location, or post of duty for a fixed or limited duration of time, upon the expiration of which the employee is expected to return to the original position, work location or post of duty. A temporary assignment may be in the form of either a temporary duty, a detail, or a temporary promotion.
- B. *Temporary Duty.* Temporary assignment of an employee to a substantially similar position at a different duty station for an indefinite or specified period, with the employee returning to his or her assigned position at the end of the assignment.
- C. *Detail.* Temporary assignment of an employee to a substantially different position or duties at the same or different work location, or post of duty without change of pay regardless of grade, for a specified period, with the employee returning to his or her assigned position at the end of the detail.
- D. *Temporary Promotion.* Temporary assignment of an employee to a different position with a change to a higher grade for a specified period with the employee returning to his assigned position at the end of the assignment.
- E. *Area of Consideration.* The office or geographic area from which volunteers will be solicited.
- F. *Qualified.* The employee meets the prescribed knowledge, skills, abilities (KSAs), and experience required for a particular temporary assignment.
- G. *Seniority.* For attorneys, it is time as an INS attorney. For all other bargaining unit employees, seniority is service computation date.

### **Section 3. Management Rights & Obligations**

- A. The Employer retains the right to temporarily assign employees and shall exercise this authority under applicable law, appropriate regulations, and this Agreement. This includes the right to:
  - 1. Determine the requisite knowledge, skills, and abilities (KSAs), and experience for a temporary assignment; and
  - 2. Determine the area of consideration for a temporary assignment.
- B. The Employer will maintain a temporary, rotational assignment process that is free of bias and favoritism. Absent a need for a specific skill(s), experience, or qualification(s), the Employer shall use volunteers before requiring employees to participate in a temporary assignment involuntarily unless the Employer determines that there is a need for a specific volunteer to continue to perform his or her regular duties. When a temporary assignment



involves crossing the international dateline, the assignment shall be rotated in the same manner as all other temporary assignments.

#### **Section 4. Competitive Service Employees: Temporary Assignments**

Competitive service employee temporary promotions and details to higher graded positions will be handled under the Merit System Principles (MSP) II.

#### **Section 5. Legal Proceedings Employees: Temporary Assignment Process**

##### **A. Temporary assignment announcements and records.**

1. The Employer will use the electronic mail system to announce temporary assignment opportunities to employees and the appropriately designated Regional representative.
2. The Employer will provide as much advance notice as possible to employees selected for a temporary assignment.
3. The announcement will include the area of consideration, nature of the duties, KSAs and any required special skills, location, duration, and grade level of the temporary assignment.
4. The open period for submission of volunteer interest forms will be specified in the announcement. (See Appendix A for Voluntary Temporary Assignment Form)
5. The Employer will select the employee for a temporary assignment in accordance with subsections B and D below.
6. The Employer will announce the selectee by electronic mail to the area of consideration.
7. The Employer will maintain sufficient records of temporary assignments made under this Article.

##### **B. Volunteer Selection Procedures.**

1. The Employer is committed to a fair rotation of a temporary assignment process that is free of bias or favoritism, consistent with the needs of the Service. The Employer will announce a voluntary, temporary assignment as specified in subsection A above.
2. After the close of the announcement, the Employer will, at a minimum, consider and select according to the following:
  - a. The volunteer's requisite KSAs and experience to successfully perform the temporary assignment.
  - b. The volunteer's history of voluntary assignments within the last 36 calendar months.

- c. The employee's current assignment and workload.
- 3. After consideration of subsection B.2 above, where all other factors are considered equal, the senior attorney will be selected. In those instances where specialized skills are required, the best-qualified volunteer may be selected.
- 4. An employee's consideration, not selection, for a temporary assignment is not restricted by the employee's workload.
- 5. The employee's service on an involuntary, temporary assignment does not exclude the employee from consideration for a voluntary temporary assignment.
- 6. Selection for a voluntary, temporary duty does not preclude selection for a subsequent detail. Neither does selection for a detail preclude selection for a subsequent temporary duty.

#### C. Involuntary Temporary Assignments.

- 1. The Employer will make reasonable efforts to limit the imposition of involuntary temporary assignments on individual employees. This may include broadening the area of consideration.
- 2. In the event there are not qualified volunteers, the Employer will evaluate the relative merits of mandating the selection from a specified area of consideration. Once an area of consideration is selected to provide a candidate, the Employer will select an employee based on inverse seniority; the requisite KSAs and experience; involuntary temporary assignment history; and workload.
- 3. To the extent possible once an employee serves an involuntary temporary assignment, the Employer will not designate the employee for another involuntary temporary assignment until qualified and available employees in the area of consideration also have served an involuntary assignment.
- 4. An employee may submit a form that specifies the reason(s) an employee is requesting exemption from involuntary temporary assignments. (See Appendix B for Temporary Assignment Exemption Form). The employee must state the reasons in sufficient detail to allow the Employer to make an informed and reasonable decision on the request. Involuntary exemption would be for no more than six (6) months at a time. The Employer agrees to maintain this information in the strictest confidence to maintain the employee's privacy. This does not preclude the Union's right to information under the statute.

## **Section 6. Documentation of Temporary Assignments**

Temporary assignment to other activities or to higher graded positions for 45 consecutive workdays or more will be documented by memorandum to the employee with a copy placed in the Official Personnel Folder. Should the requirements of the Employer necessitate an employee's being detailed to a lower position, this will in no way adversely affect the employee's salary, classification or job standing. If an employee alleges that a temporary assignment violates governing regulations or this Agreement, he or she may file a grievance under the negotiated grievance procedure.

## **Section 7. Time Limitation on Temporary Assignments**

Except for training courses and temporary assignments outside the continental U.S., the employee will serve on a temporary assignment for no more than 90 calendar days. The Employer may decide that there is a justifiable reason for the employee to continue on the temporary assignment that may then be extended for no more than 30 calendar days. If it necessitates a greater amount of time, then notification to the Local President will be provided as to the need and expected duration of time.

## **Section 8. Temporary Assignments Exceeding 120 Days**

For voluntary, temporary assignments to bargaining unit positions at a higher grade in excess of 120 days, the employee will be selected and temporarily promoted to the higher grade if the assignment was filled through Sections 4 and 5 above.

## **Section 9. Reopener**

Either party may request reopening of this Article no earlier than 18 months of the Agreement effective date. The reopener request must be based on a creditable presentation of the problems or difficulty in the implementation and administration of this Article. The procedures for presentation of a proposal will be covered by Article 9 of this Agreement.

# **ARTICLE 15**

## **HOURS OF WORK**

### **Section 1. Definitions**

A. *Hours of Duty.* The hours of duty for full-time employees are 80 hours per biweekly pay period. The hours of duty for part-time employees are determined by their appointment authority. Available duty hours are generally 6:00 a.m. to 7:00 p.m. The hours of duty are the number of hours an employee is required to work or account for by charging to approved leave.

- B. *Work Week*. The administrative workweek shall be seven (7) consecutive days, Sunday through Saturday. The basic workweek shall be scheduled on five (5) days, Monday through Friday, where possible and the two (2) days outside the basic workweek shall be consecutive.

The occurrence of holidays shall not affect the designation of the basic workweek.

- C. *Workday*. The basic non-overtime workday shall not exceed eight (8) hours excluding any unpaid meal period.
- D. *Core Hours*. The time periods during the workday that employees are not on approved leave and must be present for work. Where an office has a court requirement, the starting of core hours will be no later than one-half (½) hour before the start of court, morning or afternoon session. Generally, employees will observe core hours from 9 a.m. to 3 p.m. Part-time employees will observe core hours between 9-11 a.m. and 1-3 p.m.
- E. *Flexible Hours*. The times during the workday, workweek or pay period within the hours of duty during which an employee covered by an alternative work schedule may choose to vary his or her own work schedule and/or choose to vary his or her times of arrival and departure from the work site consistent with the Employer's needs.
- F. *Standard Work Schedule*. An employee is required to be on duty for a regular eight (8) hour day, five (5) days a week, with a set arrival and departure times. Part-time employees are required to be on duty regularly on officially prescribed days and hours.
- G. *Alternative Work Schedule (AWS)*. Includes the following flexible hour schedules:
1. *Gliding Work Schedule*. A full-time employee on an eight (8) hour workday may determine his or her own arrival and departure time within the limits of the core hours. A part-time employee may also determine his or her own arrival and departure time within the limits of the core and flexible hours.
  2. *Compressed Work Schedule*. A full-time employee completes an 80-hour bi-weekly work schedule in less than 10 regular workdays. A part-time employee completes a bi-weekly work schedule in less than 10 days in a pay period. Compressed schedules are always fixed schedules that consist of a set of fixed arrival and departure times. Employees may elect a compressed schedule from among the three (3) available options: 4/10; 5/4/9, and 4/9/4.
  3. *Maxiflex Work Schedule*.
- H. *Employee Decision Period (EDP)*. The EDP is the period during which an employee will elect a work schedule plan.

## I. *Breaks and Lunch Period.*

1. Employees are to be provided two (2) breaks, one in the morning and one in the afternoon for 15 minutes during the workday. Breaks shall be taken in a manner consistent with job responsibilities. The breaks may not be taken at the beginning or the end of the workday to adjust arrival or departure time. Breaks in working hours of more than one (1) hour shall not be scheduled in any basic workday. Time and attendance records do not need to reflect these breaks.
2. Employees shall be accorded an uninterrupted lunch period to the maximum extent possible. The minimum lunch period is one-half (½) hour. Consistent with regulations, breaks may not be combined with the lunch period to formally extend the lunch break.
3. To the extent that the INS has control over the work facility, the Employer will provide eating facilities.

## **Section 2. Timekeeping Procedures**

- A. All employees will maintain an accurate time and attendance record that will be submitted to the Employer at the end of each pay period.
- B. Both Employer and employee will retain a copy of the recorded hours.

## **Section 3. Work Schedules and EDP**

### A. General.

Employees may elect a work schedule that fulfills mission requirements and meets the needs of the employees. Times of departure and arrival must be consistent with duties and requirements of the position. These work schedules are a Standard Work Schedule, a Compressed Work Schedule, a Gliding Work Schedule, or a Maxiflex Work Schedule.

### B. Standard Work Schedules.

An employee must work eight (8) hours a day, five (5) days a week, Monday through Friday, with two 15-minute breaks and a one-half hour lunch period.

### C. Compressed Work Schedules.

1. The duty hours for this schedule may range from 6:00 a.m. to 7:00 p.m. An employee must specify which compressed work schedule option is being elected, and select arrival and departure times for each day and the proposed time off. The window for arrival must be in accord with the core hours and the daily work schedule is limited to a maximum 10-hour workday. The arrival and departure times will be the same for each day as

appropriate, except for shorter days. An employee must be present during core hours, on leave or on AWS time-off.

- a. *4/10 Schedule*: During a workweek, an employee elects to work 4 days a week at 10 hours a day, selects a starting time and ending time, and selects one (1) day of the week to be off duty. Each week is the same schedule.
  - b. *5/4/9 Schedule*: During a two (2) week pay period, an employee elects to work 8 days at 9 hours, 1 day at 8 hours, and selects one (1) day of the two-week pay period to be off duty. An employee selects the starting and ending times and each pay period is the same schedule.
  - c. *4/9/4 Schedule*: During a workweek, an employee elects to work 4 days at 9 hours and 1 day at 4 hours. An employee selects the starting and ending times for both the 9-hour day and 4-hour day. An employee must begin work during core hours for both the full day and half day. Each week is the same schedule.
2. Leave is charged based on the scheduled hours for the workday, not to exceed 10 hours. Holiday pay is based on the scheduled hours for that day, not to exceed 10 hours.
  3. The parties understand that none of the hours which constitute a compressed work schedule may be compensated with or be credited for purposes of premium pay or Fair Labor Standards Act compensation.

#### D. Gliding Work Schedules.

1. The duty hours for this schedule will range from 6:00 a.m. to 7:00 p.m. during a workday. The employees determine their arrival and departure times for each day and the proposed time off. The arrival and departure times may be different for each day in accordance with the core hours.
2. The work schedule is limited to a maximum of an 8-hour workday plus a lunch period. Employees must be present during the core hours for a full day, or core hours of a half-day schedule.

#### E. Maxiflex Work Schedules

1. The following sets out the parameters for the implementation of a maxiflex schedule. Local augmentation may be made to accommodate local office working conditions.
  - a. Employees continue to be responsible for completing required hours of work for the biweekly pay period. Employees must work, at a minimum, their required core hours each day. However, employees may vary the number of hours worked on a given workday or the number of hours each week within the limits established by this section. Employees must schedule their arrival and departure times in a manner consistent with their assigned court schedule and designated office obligations.

- b. Employees must be present in the office, at a minimum, during the core hours, on any assigned workday, excluding preassigned days off.
- c. Any employee who is not on duty during core hours must request leave.
- d. Each participating employee must personally record his/her attendance at various times during the day on daily Maxiflex Time and Attendance accounting. Time accounting must be done contemporaneously with arrivals and departures from the office and should not be done after the fact. Any employee who is present for work and fails to account for time on any workday will be presumed only to have worked the core hours for that day. Lunch periods cannot be credited towards duty time. Each employee shall certify that the information provided in his/her time and attendance accounting is true and correct.
- e. In order to schedule court in advance and meet office obligations, employees will be required to retain their pre-assigned day off.
- f. Each employee shall schedule, at a minimum, an eight-and-one-half-hour (8½) day when assigned to serve as duty attorney.
- g. All procedures for requesting and receiving approval for annual and sick leave continue to apply.
- h. If an employee elects a maxiflex schedule, the maximum holiday time and attendance charge is eight (8) hours.

F. Employee Decision Period (EDP) For Work Schedules.

- 1. An EDP will be held twice a year during the first two (2) weeks of the months of January and July in order to permit employees an opportunity to elect either a standard work schedule or an alternative work schedule. A transferee from within the bargaining unit may make an election request at his or her entry on duty date. A new employee may submit a request at the start of the next EDP.
- 2. Employees may move between work schedule plans only during the EDP unless, and upon the Employer's approval, the employee can demonstrate that she or he will suffer a hardship or diminution of work life quality prior to the EDP. The Employer may direct employees to change their schedules either permanently or temporarily based on mission needs, abuse or substandard performance.

G. Approval/Disapproval of Work Schedules.

- 1. The supervisor will use best efforts to review and approve or disapprove the proposed work schedule as soon as practicable.

2. Work schedule elections are subject to supervisory approval and building accessibility.
3. If more employees request the same work schedule or day(s) off than can be accommodated, the supervisor will first seek a sufficient number of volunteers to adjust their schedule. In the event there are insufficient volunteers, application of seniority, as defined in Article 14 § 2.G, will determine which employee(s) will have the work schedule and/or day off. The supervisor has the discretion to override the longest seniority to allow for meeting mission requirements and fairness.
4. Supervisors will notify employees of the approval or disapproval of the work schedule in writing and the reasons thereof. The approved work schedules will become effective the second pay period after the end of the EDP.
5. Except as provided in subsection F.2 above, the work schedule plan, once approved, will stay in effect until the next EDP.

#### **Section 4. Temporary Duty & Training**

##### **A. Temporary Duty (TDY).**

Employees on temporary duty (TDY) may continue on their work schedules provided prior supervisory approval is obtained and the circumstances of the TDY so permit. Otherwise, extended TDY may require that an employee revert to the Standard tour of duty schedule.

#### **Section 5. Reopening Article 15**

The parties recognize the current legislation prohibits premium pay. If the prohibition is repealed, the parties agree to reopen and bargain under Article 9 over: 1) the terms and conditions of premium pay, to the extent consistent with law, rule, and regulations; and 2) employee work schedules.

## **ARTICLE 16**

### **FORMAL MEETINGS & INVESTIGATIVE INTERVIEWS**

- A. The Union shall be given the opportunity to be represented at 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 conditions of employment.
- B. The Employer will provide the Union the opportunity to be represented at any examination of an employee in the unit by a representative of the Employer in connection with an investigation if:



1. The employee reasonably believes that the examination may result in disciplinary action against the employee; and
  2. The employee requests representation.
- C. The Employer will advise, in writing, employees of the unit of this right annually.
- D. In some circumstances, a written memorandum may be used as a substitute for an oral examination in connection with an investigation. In such cases, where the criteria of subsection B of this Article are met, the employee is entitled to the opportunity to consult with a Union representative prior to completing the memorandum.
- E. Interviews in connection with misconduct investigations may be conducted at any reasonable hour.

## **ARTICLE 17**

### **TELECOMMUTING**

#### **Section 1. Introduction**

- A. Telecommuting is an employee-initiated work arrangement away from the employee's normal duty location. The term "telecommuting" encompasses and supersedes the term "flexiplace."
- B. Employees may telecommute provided that telecommuting 1) meets needs of the telecommuting employee, 2) meets the Employer's needs, and 3) does not adversely affect other employees.
- C. An employee does not have an automatic right to participate in telecommuting. The Employer may approve the request, may approve the request with modifications, or may deny the request. The Employer is expected to make reasonable and reasoned decisions.

#### **Section 2. General Considerations**

- A. Telecommuting may vary, depending upon the individual arrangements agreed to by the employee and the supervisor.
- B. This program provides for three types of telecommuting:
1. *Regular.* Work scheduled in advance and performed at an alternative workplace on a regular and recurring basis.

2. *Short-term, Situational.* A telecommuting arrangement used on an occasional basis, for part of a day, for individual days or hours within a pay period, or for several pay periods on a temporary basis for an appropriate purpose, such as:
  - a. Temporary incapacitation due to injury or illness;
  - b. More efficient completion of a project;
  - c. Accommodation of an elderly or disabled employee;
  - d. Meeting environmental, financial, or commuting concerns;
  - e. Accommodation of personal or family responsibilities; or
  - f. Other legitimate reasons.
3. *Episodic.* This is a third type of telecommuting that is available on an ad hoc, short-term basis. Supervisors retain the authority to authorize episodic use of an alternative work location by which employees are allowed to work at other than their normal duty location to complete a project or other task on an ad hoc, short-term basis. This does not necessitate compliance with all the telecommuting application procedures, including executing an agreement. Supervisors are still required to ensure employees are working their duty hours and are completing the work justifying the alternate work location.

C. Participants in telecommuting will normally be permitted to use alternative work schedules subject to approval.

### **Section 3. Eligibility Criteria**

- A. The employee must identify sufficient portable work that meets the office's organizational needs.
  1. *Portable work.* Portable work is work that is either a part of the employee's regular assignment; and/or an office's regular workload; and may be performed with equal effectiveness at another location.
- B. The employee must have completed the probationary period.
- C. The employee's latest rating of record is "fully successful," "pass," or better; the employee is not on a performance improvement plan.
- D. The employee is not on leave restriction.
- E. The employee has a history of reliable and responsible performance of duties, including dependence and dependability in accomplishing work assignments in the current organization.

- F. The employee has not received any disciplinary or adverse action in the last 12 months that would adversely affect the integrity of the program or the INS, and is not the subject of any pending disciplinary or performance-based action.
- G. The alternate work site complies with reasonable safety standards, and has adequate workspace and equipment needed to perform official business.
- H. Surplus equipment is available for employee's use, or funds are available to provide, install and maintain necessary equipment and services needed to perform work, if the employee does not have or is unwilling to use personal equipment and services for official business.
- I. There is no more than a *de minimis* adverse impact on other employees in terms of workload, exposure to standby responsibilities, or reassignment of duties.
- J. The employee has dependent care arrangements to permit concentration on work assignments.
- K. The employee's absence from the work site would not unduly interrupt facility operation.

#### **Section 4. Approval/Disapproval/Termination of Telecommuting Agreements**

- A. Employees desiring to participate in telecommuting will submit a written request to their supervisor. The written request will identify portable work and will include the proposed work schedule and days to be worked away from the office site.
- B. The supervisor will review the request and respond in writing within 14 calendar days of receipt.
- C. If the supervisor denies the request for telecommuting, the supervisor will provide the employee with a written explanation.
- D. If the request is approved, a written agreement will be signed.
- E. Agreements will be no more than one (1) year in length with an opportunity to execute a new agreement upon expiration.
- F. An employee may make an emergency request orally and the supervisor may grant or deny it orally. The parties will execute a written agreement as soon as possible.
- G. Employee participation in the telecommuting program is voluntary and the employee may terminate the program at any time. The employee's Notice of Termination will be in writing to the approving official who will acknowledge it in writing.
- H. The supervisor may temporarily suspend, modify or terminate the telecommuting agreement for good cause or Employer need. The supervisor may take into account such factors as the

success of the arrangement in achieving Employer's objectives, and changed circumstances such as changes in budget, staffing, and workload demands.

Notice shall be provided to the employee in writing with reasons for the required action. The employee must be provided a reasonable opportunity to make arrangements to return to the normal work site. The supervisor will provide written notice of its decision to modify or terminate a telecommuting arrangement in accordance with Article 9 Section 1.A of this Agreement.

## **Section 5. Guidelines**

- A. Whenever a supervisor receives two (2) or more employee requests for approval of overlapping telecommuting arrangements or concludes that the combined absences would have an adverse impact on the Employer or other employees, the supervisor shall inform the employees that both of the requests cannot be approved. The supervisor shall thereafter meet with the employees to determine whether the parties can reach agreement to modify or limit the requests to satisfy the employees' needs and meet the Employer's needs.

The supervisor will give the Union an opportunity to be present (either in person or by telephone) at such meeting. If the parties do not reach agreement, and all factors are equal, the supervisor will give the employee with seniority, as defined in this Agreement, priority in determining which telecommuting schedule will be allowed.

- B. In the event that an employee's scheduled workday at a work site away from the normal duty location falls on a holiday, the employee may not substitute any other day in the workweek as his or her telecommuting day.
- C. A supervisor may, at any time, temporarily suspend the telecommuting privilege for meetings, training, or other Employer need, and require that the employee report without delay to the normal duty location or other location. When situations occur that require the employee to return to the normal duty location, travel to and from the office is normal commuting time and is not considered hours of work.
- D. Overtime and compensatory time for employees participating in the telecommuting program will conform to applicable law and regulations.
- E. Policies and practices for requesting and using leave will conform to applicable law, regulations and this Agreement.
- F. Facilities/Equipment/Supplies.
  - 1. The employee is responsible for providing the equipment necessary to complete all tasks. The Employer will make a good faith effort to provide the necessary equipment, software, supplies, and services required for employees to participate in the telecommuting program subject to the limitations of the Employer's budget.

2. The Employer will not be responsible for operating costs, home maintenance costs, or any other incidental costs (for example, utilities and insurance) associated with the use of the telecommuting work site. The employee is entitled to reimbursement for appropriately authorized expenses while conducting business for the Employer (for example, official telephone call) as provided for by law and regulations.
- G. Employees participating in the telecommuting program will not be excused from work because workers at the normal duty location are dismissed or not required to report to work due to an emergency, if the emergency does not affect the work being performed at the alternate work location. If an emergency occurs at the alternate work site that affects the employee's ability to perform official duties, the employee will immediately notify his or her supervisor. The supervisor will direct the employee to another work site, grant an excused absence, allow the employee to request leave, or make an arrangement as needed to meet the needs of the Service.
  - H. In case of injury, theft, loss, or potential tort liability related to telecommuting arrangements, the telecommuting employee will allow inspection of the telecommuting site. The Employer will give the employee reasonable notice prior to any inspection of the telecommuting site.
  - I. The Employer will provide the Local President with copies of telecommuting work agreements of bargaining unit employees at the time the agreement is approved.

#### **Section 6. Effect of Telecommuting with Regard to Temporary Assignments**

- A. An employee who is working a telecommuting program may apply for temporary assignments on the same basis as those who are not on a telecommuting schedule.
- B. The Employer may involuntarily assign an employee who is working a telecommuting schedule to temporary assignments on the same basis as those who are not on a telecommuting program.

### **ARTICLE 18**

#### **DISCIPLINARY/ADVERSE ACTIONS**

- A. The parties recognize that all individuals make mistakes. The Employer has the right and obligation to identify and correct both conduct and performance deficiencies. Corrective action can include counseling (both oral and written), letters of reprimand, disciplinary actions (suspensions of one (1) to 14 days), and adverse actions (suspension of 15 days or more, reductions of grade or pay, furloughs of 30 days or less, and removal).
- B. Counseling is a non-disciplinary action. Counseling may be accomplished orally or in writing. Counseling shall be used to constructively encourage an employee's improvement in the area of conduct. Oral and written counseling will be conducted in private with the affected employee.

- C. A letter of reprimand is considered the first level of disciplinary action. A reprimand is used to correct misconduct. When the Employer serves a letter of reprimand, the Employer will allow the employee and/or his or her representative 10 calendar days to request a reconsideration. The employee may request reconsideration either orally, in writing, or both. If the Employer determines there is just cause to sustain or revoke the reprimand a decision will be rendered within 10 days of the employee's request for reconsideration. An extension of these prescribed deadlines may be extended by mutual agreement.

A letter of reprimand will stay in the employee's Official Personnel File for a period of up to, but not exceeding, two (2) years. The period of reconsideration and Employer response runs concurrent with the time to file a grievance.

- D. When the Union is designated as the representative in a disciplinary or adverse action, the employee will notify the Employer, in writing, of such designation. The designation will include the name, address, and telephone number of the representative. All correspondence will be served by the Employer to the representative.

A bargaining unit employee, who has received disciplinary action, may arrange to have copies of releasable correspondence and documents, from the disciplinary file and related to his or her case, furnished to the Union representative by authorizing that release in writing. If distance and time are factors in the authorization, the authorization may be furnished to the local supervisor in writing and that supervisor will attest to its authenticity by telephone to the releasing official.

- E. If the employee elects not to be represented by the Union, correspondence will be addressed to the employee and it will remain the employee's prerogative as to whether he or she wishes to furnish the Union with copies of such correspondence.
- F. No record of a complaint, determined to be unfounded or not investigated, will be placed in the employee's Official Personnel Folder. Such complaint may, in the interest of the employee and the Service, be maintained in a subject file, but will not, under any circumstances, be considered as a factor in connection with any promotion. The record of the unfounded or not investigated complaint may be maintained in such subject file for up to 12 months.
- G. It is recognized that all employees are expected to pay promptly all just financial obligations. A just obligation is one, which the employee acknowledges as being just, one issued by law such as state and local taxes, or one, which has been reduced to a judgment by court means. In the event of a dispute as to the validity of a debt between an employee and any private individual or firm, the Employer will take no action (other than to comply with a valid court order) until the dispute has been resolved. This would not apply in those cases where it is shown the employee has been involved in fraud or deceptive practices.

- H. Notice of Disciplinary Action.

1. The parties agree that letters of reprimand, suspensions of less than 15 days, and adverse actions will be taken only for just cause.
2. An original and one (1) copy of all proposed notices of disciplinary actions, including adverse actions, shall be furnished to the employee.
3. The Employer shall furnish employees with notices of proposed disciplinary actions at the earliest practicable date after the alleged offense has been committed and made known to the Employer.

Where the Employer is investigating an issue(s) arising from an allegation of non-criminal misconduct, the Employer will hold in abeyance the initiation of disciplinary action until the investigation is completed. However, the Employer may take immediate disciplinary action on unrelated issue(s) not subject to the investigation.

Any time the Employer deems that immediate action is necessary to protect the interest of the Government, other employees, or the misconduct is subject to a criminal investigation or indictment, the Employer may take such steps as it deems necessary while the investigation is pending.

4. The Employer will make available copies of the file and any relevant documentation relied upon to propose the disciplinary or adverse action upon request of the employee or his or her designated representative.
- I. An employee who believes that disciplinary or adverse actions were not taken for just cause may file a grievance in accordance with Article 22 of this Agreement unless prohibited by Article 22 § 2.B.
  - J. Any disciplinary or adverse action and all copies thereof which are later found to have been unwarranted shall be removed from the official file of the employee and destroyed and the employee and/or his or her designated representative will be notified in writing of such action.

## **ARTICLE 19**

### **CAREER LADDER PROMOTIONS/WITHIN GRADE INCREASES**

#### **Section 1. Career Ladder Promotions**

Career ladder promotions shall be processed in a timely manner once an employee has meet the time-in-grade requirements and the supervisor has determined the employee has acquired the knowledge, skills and abilities to work at the next higher level. Once these criteria are met, the promotions will be made effective at the beginning of the following pay period. Promotions will be processed retroactively if an administrative delay occurs after the supervisor's determination.

## **Section 2. Within Grade Increases**

- A. When the Employer's evaluation leads to a conclusion that the employee's work is not at an acceptable level of competence for a within grade increase, the Employer will take the following actions:
1. Explain each aspect of performance in which the employee's performance falls below an acceptable level and relate deficiencies to specific job elements and performance standards.
  3. Explain what is required to meet the acceptable level and what the employee must do to elevate his or her performance to that level.
    - a. Warn the employee that if performance does not improve to the acceptable level, the within grade increase, for which the employee otherwise would be eligible, will be denied.
    - b. Provide assistance in improving performance rated below the fully successful level. Such assistance may include formal training, on-the-job training, counseling, or closer supervision. Within-grade increase determinations will be made in accordance with regulations, to include providing the employee with a written notification, when a negative determination is made, stating the reason(s) for the determination and what the employee must do to improve performance to an acceptable level.
- B. A within-grade increase shall be effective on the first day of the first pay period following the completion of the required waiting period. There are two (2) exceptions:
1. When there has been a determination that the employee is not performing at an acceptable level of competence (ALOC); or
  2. When the employee's ALOC is delayed because the employee
    - a. has not served 90 days under performance standards; or
    - b. the employee was reduced in grade because of poor performance and has not served 90 days under performance standards in the new position.
- C. If a within grade is delayed under subsection B.2.b and the employee is subsequently found to be performing at the ALOC, the increase will be granted retroactively to the beginning of the pay period following the completion of the waiting period.

## **Section 3. Quality Step Increase**

- A. *Quality Step Increase (QSI)*. Quality step increase means an increase in an employee's rate of basic pay from one step of the grade of his or her position to the next higher step of the grade in accordance with 5 U.S.C. § 5336.



- B. The purpose of QSIs is to recognize outstanding performance by granting faster than normal step increases.
- C. To be considered for a QSI, a competitive service employee's current rating of record must be outstanding and the employee must not have received a quality step increase within the preceding 52 consecutive calendar weeks. For attorneys, a QSI will be granted under the provisions of the pass/fail appraisal process.
- D. A determination to grant a QSI should be made as soon as practicable after a rating of record is approved.
- E. A QSI shall be effective on the 1st day of the 1st pay period following the approval date.

## **ARTICLE 20**

### **EQUAL EMPLOYMENT OPPORTUNITY**

#### **Section 1. General**

- A. The Employer will provide equal opportunity in employment for all qualified persons and will prohibit discrimination in employment because of race, color, religion, sex, national origin, age, or disability, except where required by statute or pursuant to bona fide occupational qualifications.
- B. The Union recognizes that the Employer is responsible for the development of the Equal Employment Opportunity (EEO) Plans at both the National and Regional levels.
- C. For purposes of administration of this Article, days equate to calendar days.

#### **Section 2. Bargaining Obligations**

Where the development and implementation of the Employer's EEO Plans and Programs involve changes in personnel policies, practices, or working conditions, the Employer will fulfill its bargaining obligations with the Union under 5 U.S.C. Chapter 71.

#### **Section 3. Filing Options**

- A. Any employee who believes that he or she has been discriminated against on the grounds set forth in Section 1.A above, may file any one of the following:
  - 1. A grievance pursuant to the provisions of Article 22 of this Agreement;
  - 2. A complaint of discrimination with the Employer subsequent to required EEO pre-complaint counseling; or

3. An appeal to the Merit Systems Protection Board (MSPB) where an action is otherwise appealable to the Board and the employee alleges that the basis for the action was discrimination prohibited by Section 1.A above.
- B. An employee shall be deemed to have exercised his or her option under this section at such time as the employee timely files one of the following: 1) a formal complaint of discrimination; 2) an MSPB appeal; or 3) a grievance in writing in accordance with the provisions of this Agreement.
- C. The selection of the negotiated grievance procedure contained in this Agreement to process a complaint of discrimination shall in no manner prejudice the right of an aggrieved employee to request the MSPB to review the final decision in the case of any personnel action that could have been appealed to the MSPB, or, where applicable, to request the Equal Employment Opportunity Commission (EEOC) to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the EEOC. Appeals to the MSPB or the EEOC shall be filed pursuant to such regulations as the MSPB or the EEOC may prescribe.

#### **Section 4. Grievance Procedures Pursuant to Article 22**

- A. An employee may file a grievance pursuant to this Article within 30 days following:
  1. The date of the alleged discriminatory incident; or
  2. The date upon which the aggrieved became aware of the alleged discriminatory incident or situation; or,
  3. The date of the employee's final interview with the EEO Counselor.
- B. If the employee elects to pursue the complaint under the grievance procedures of this Agreement and he or she elects to process the grievance without representation, the Union shall have the right to be present at any meeting between the Employer and the employee concerning the grievance.
- C. Where the corrective or remedial action to be taken as a result of statutory adjudicatory procedures would conflict with or appear to conflict with, the provisions of this Agreement, the Employer shall afford the Union reasonable notification and opportunity to negotiate the impact of the Employer's action effectuating the decision.
- D. The provisions of this Agreement may not serve to prevent implementation of statutory equal employment opportunity decisions (i.e., the MSPB, the EEOC or the Federal courts) where the provisions:
  1. Violate applicable law, order, or regulations in effect at the time this Agreement was approved;

2. Are themselves discriminatory in their impact on employees; or
3. Leave no reasonable alternative for taking required action.

### **Section 5. EEO Process**

- A. Employees are encouraged but not required to consult with an EEO Counselor prior to filing a grievance under this Article. Such consultation shall take place within 45 days of the alleged incident or the employee reasonably became aware of alleged discriminatory incident. The time limit may be extended based on the conditions contained in the EEOC regulations.
- B. The names, offices, and telephone numbers of local EEO Counselors serving the duty station shall be posted on official bulletin boards.
- C. The EEO Counselor shall:
  1. Counsel the aggrieved employee concerning the issues in the matter;
  2. Make whatever inquiry into the matter that he or she believes necessary;
  3. Seek a solution of the matter on an informal basis;
  4. Keep a record of his or her counseling activities;
  5. Submit a written report to the EEO Officer, with a copy to the aggrieved employee, summarizing his/her actions concerning the allegations of discrimination; and
  6. Advise the aggrieved employee that he or she has the right to have a Union representative or other representative of his or her own choosing present, throughout all stages of the EEO complaint process.
- D. The EEO Counselor shall, insofar as is practicable, conduct a final interview with the aggrieved employee within 30 days after the date on which the matter was called to the attention of the EEO Counselor by the aggrieved employee.
- E. If the final interview is not concluded within 30 days and the matter has not been previously resolved to the satisfaction of the employee, the EEO Counselor shall at that time inform the aggrieved employee of his or her right to immediately file a complaint of discrimination by exercising one of the options in Section 3.A.
- F. The EEO Counselor shall not in any way attempt to restrain an employee from filing an EEO complaint, nor may an EEO Counselor encourage an employee to file an EEO complaint.

- G. The EEO Counselor shall not reveal the identity of an aggrieved employee who has come to him or her for counseling, except when authorized to do so by the aggrieved employee, until a written EEO complaint has been filed.
- H. EEO Counselors shall be free from restraint, interference, coercion, discrimination, or reprisal in connection with the performance of their duties.
- I. At any stage in the processing of an EEO complaint the employee shall have the right to be accompanied, represented, and advised by a representative of his or her choosing.
- J. The employee shall also have the right to present the EEO complaint without representation.
- K. EEO Counselor.
  - 1. The selection of EEO Counselors is solely the responsibility of the Employer.
  - 2. Any employee who is interested in serving as an EEO Counselor shall notify the appropriate Regional Director, Director of Administrative Center or EEO Officer, in writing. Such notification shall include a statement of the employee's qualifications and the reasons for his or her desire to serve in such capacity.
  - 3. In order to avoid conflict of interest, or apparent conflict of interest, Union stewards or Union officials may not serve as EEO Counselors.
  - 4. Nominations for prospective EEO Counselors may be submitted by the Union, employees, or other interested persons or organizations. Union membership, or lack thereof, shall not provide a basis for nomination or failure to nominate an employee.
  - 5. EEO Counselors shall be selected by the Employer without regard to race, color, sex, religion, national origin, age, marital status, political affiliation, physical or mental disability or Union membership.

## **ARTICLE 21**

### **LEAVE**

#### **Section 1. Annual Leave**

- A. Right to Use. Use of annual leave is a right of the employee and not a privilege. The scheduling of annual leave is subject to the needs of the Employer and advance approval by the supervisor.
- B. Earn and Accrue. Annual leave will be earned and accrued in accordance with applicable laws and regulations.

- C. Request Procedures. All requests for annual leave will be requested in advance and in writing, preferably on the Standard Form 71. Leave use will be recorded appropriately on the Time and Attendance Report or the appropriate time accounting process.
- D. Timely Leave Approval. Consistent with the needs of the Employer, annual leave which is requested in advance will be decided in a timely manner.
- E. Approval. When all requests for annual leave for a given period cannot be granted, the supervisor shall give consideration to the following factors:
  - 1. Accrued Leave. Amount of leave to the employee's credit.
  - 2. Seniority. Seniority for this Article has the same meaning and usage as elsewhere in this Agreement.
  - 3. Children's Vacation. Whether employees have children of school age and cannot benefit from vacations taken when their children are in school. This consideration does not trump previously approved leave for other employees.
  - 4. Previous Request. Whether or not employees were able to take leave at the desired time during a previous leave year.
- F. Previously Approved Leave. When considering the factors in subsection E above, a supervisor is not obligated to cancel another employee's previously approved leave.
- G. Advanced Annual Leave. Annual leave that can be earned in a given year will be available for use from the beginning of each calendar year. Annual leave may be granted and used in advance of accrual, not to exceed the amount that is expected to accrue during the remainder of the same leave year.

## **Section 2. Sick Leave.**

- A. Earn and Accrue. Sick leave will be earned and accrued in accordance with applicable laws and regulations.
- B. Purposes for Sick Leave. When requested and approved as provided in this Article, employees may use sick leave for the following purposes:
  - 1. Medical Appointments.
  - 2. Incapacity.
  - 3. Family Care.
  - 4. Family Death.
  - 5. Isolated for communicable disease.

6. Adoption.
7. FEFFLA. For any approved leave, an employee must specifically designate that the leave be charged under the Federal Employees Family Friendly Leave Act.

C. Advanced Sick Leave.

1. Requirements. Unless there is documented leave abuse, when an employee's sick leave balance has been exhausted, the Employer will approve requests for advanced sick leave in cases of serious disability or ailment if:
  - a. Medical Certificate. The application is adequately supported by a medical certificate from an appropriate health care provider;
  - b. MRO Review. If there are questions regarding the employee's certificate, it will be reviewed and assessed by the Employer's Medical Review Officer;
  - c. Repayment. Repayment may be reasonably expected;
  - d. Maximum Advance. The amount advanced to a full-time employee may not exceed 30 days. Part-time employees, working under a regular tour of duty, may be advanced sick leave on a pro rata basis.
  - e. Minimum Absence. The absence on account of illness must be for a period of five (5) or more consecutive workdays, but the actual advance may be for any part of the total absence.

**Section 3. Administrative Leave**

Administrative leave is an excused absence from duty administratively authorized without loss of pay and without charge to an employee's accrued leave as specified in the Administrative Manual, AM 1.3.109, Attachment B, Chapter 14. Matters include but are not limited to voting, blood drive, jury duty, and intra-INS interviews.

**Section 4. Leave Without Pay**

- A. Definition. *Leave Without Pay* (LWOP) is a temporary non-pay status and absence from duty which has been requested by an employee and approved in advance by the Employer.
- B. Matter of Right. The following employees are entitled, as a matter of right in accordance with the applicable laws, rules and regulations, to take LWOP for the following purposes:
  1. Disabled Veteran.
  2. Military Reservist.
  3. Employees for family necessity under FEFFLA.

C. Administrative Discretion. Recognizing that LWOP is a matter of administrative discretion and may not be demanded as a right for other than the limits set forth above, the Employer may approve requests for LWOP in the following circumstances:

1. Education.
2. Injury / Illness.

### **Section 5. Leave For Family Responsibilities**

A. Family Considerations. Under applicable law, Executive Order, and regulation, the Employer may grant annual and/or sick leave or LWOP for family circumstances. These circumstances may include maternity, adoption, bereavement, and family care.

B. Pursuant to 5 C.F.R. § 630.201(b), family member means the following relatives of the employee:

1. Spouse, and parents thereof;
2. Children, including adopted children and spouses thereof;
3. Parents;
4. Brothers and sisters, and spouses thereof; and
5. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

C. A more limited definition applies to employees requesting leave without pay under the Family and Medical Leave Act (FMLA). The FMLA definitions are found in 5 C.F.R. § 630.1202.

### **Section 6. Leave and Accommodation of Religious Beliefs**

A. Religious Observance. Employees who are required to be absent for some period of the workday because of religious observance or belief, may elect to work compensatory time as a substitute for time off, or take appropriate leave.

B. Compensatory Time. The Employer shall grant compensatory time off to an employee requesting such time off, and shall in each instance afford the employee the opportunity to work compensatory time in order to repay the compensatory time off. A request may be disapproved, however, if the requested change in work schedule interferes with the Employer's ability to efficiently accomplish its mission. In such circumstances, there is no obligation to approve requests for time off for religious observances.

C. Leave Procedures. Where an employee is granted leave for religious observance, the employee may perform compensatory time work before or after the compensatory time off. Time off taken in advance must be repaid by an equal amount of compensatory time work within eight (8) weeks following the pay period in which the employee was absent;

otherwise, the time off will be charged to annual leave or leave without pay, as appropriate. When compensatory time work is performed in advance, the time off for religious observance must be taken within eight (8) weeks of the pay period in which it was earned; otherwise, it will be forfeited. An application for time off for religious observance will be made by completing a SF-71 that will be submitted to that employee's supervisor along with a proposed compensatory work schedule.

- D. Designated Hours. The compensatory time must be worked within the office's designated hours as described in Article 15, Hours of Work.

### **Section 7. Administrative Manual Application**

The Employer's Administrative Manual will apply to matters not specifically addressed by this Agreement.

## **ARTICLE 22 GRIEVANCE PROCEDURE**

### **Section 1. General**

- A. The purpose of this provision is to provide a fair, simple and expeditious means of processing grievances. This negotiated procedure shall be the exclusive procedure available to the Union and employees in the unit for resolving grievances that come within its coverage, except as specifically provided in Section 2.B below. Any employee or group of employees in the unit may present such grievances to the Employer and have them adjusted, without the intervention of the exclusive representative, as long as the adjustment is consistent with the terms of this Agreement and the exclusive representative has been given an opportunity to be present during the processing.
- B. The initiation or presentation of a grievance by an employee will not cause any reflection on his/her standing with or their loyalty to the INS.
- C. The Employer and the Union agree that the Employer and the aggrieved party (ies) will make every effort to settle grievances at the lowest possible level. The Employer will give the employee and his/her representative a reasonable amount of official time to prepare and present the grievance.

### **Section 2. Grievances.**

- A. *Grievance*. A grievance means a complaint either by a unit employee concerning his or her conditions of employment, by the Union on its own behalf concerning conditions of employment of any employee, or alleged contractual violations by the Employer, or by the Employer concerning alleged contractual violations by the Union. Unless excluded below or excluded by law, such a complaint may concern the adverse impact of:



1. The effect or interpretation, or claim of breach of this master Agreement, or other written agreement between the parties; or
2. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

B. *Exclusions.* This procedure does not cover grievances concerning:

1. Matters which are not subject to control by Department of Justice Management; matters which are not subject to the Union's control;
2. Any claimed violation of Subchapter III of Chapter 73 of Title 5 U.S.C. (relating to prohibited political activities);
3. Retirement, life insurance, or health insurance;
4. A suspension or removal under 5 U.S.C. § 7532 for reasons of national security;
5. Any examination, certification, or appointment;
6. The classification of any position which does not result in a reduction in grade or pay of any employee;
7. A complaint of discrimination which is listed in 5 U.S.C. § 2302(b)(1) if the employee has elected to use the statutory appeal procedure;
8. An appeal of an adverse action based on performance under 5 U.S.C. § 4302 or for efficiency under 5 U.S.C. § 7512 if the employee elects the statutory appeal procedure provided under 5 U.S.C. § 7701;
9. A Union appeal of an adverse action or an allegation of discrimination against any employee if the Union is not expressly designated by the employee as his or her representative on the matter.
10. Issues which can be raised under the grievance procedure or as an unfair labor practice may, in the discretion of the aggrieved party, be raised under either procedure but not under both procedures.
11. The removal of a probationary employee during his or her probationary period.
12. The termination of a temporary appointment.
13. Notices of proposed disciplinary/adverse actions, furloughs, or removals. Issues relating to such proposal notices may, however, be raised in connection with any grievance over the final decision on the proposed action.

### C. *Identical Grievance.*

In the case of employee grievances that the parties agree to be identical, one employee's grievance may be selected by the Union for processing. All decisions for that grievance will be binding on the other grievance(s). The parties agree that, for the purposes of this section, identical grievances are ones arising from a common set of circumstances which adversely affect the grievants in the same manner where all of the witnesses would be testifying to the same or substantially similar facts. The term "substantially similar" means facts which are sufficiently alike so that a reasonable person would conclude that application of the same rules to the facts in each grievance would result in the same conclusions with regard to the outcome of those grievances.

## **Section 3. Procedures for Grievances Filed by Employees**

### A. First Step.

1. The grievant must file his/her grievance in writing with the first level of supervision or the official with the authority to adjust the grievance within 30 calendar days after a particular act or occurrence or within 30 calendar days from the date on which the employee knew, or had reason to know, of the act or occurrence which is the subject of the grievance. The grievant may, if he or she desires, be assisted in the presentation by a Union representative. The Employer will respond in writing within 21 calendar days of receipt of the grievance.

### B. Second Step.

1. If the employee is dissatisfied with the decision of the Step 1 Deciding Official and desires to proceed to Step 2, the employee (or the employee's Union representative acting on behalf of the employee) must submit a written grievance to the next higher level official or appropriate official as specified below, within 14 calendar days after receiving the Step 1 decision on the grievance.
2. Submission of Step 2 Grievances:
  - a. District Counsel Employees: to the Regional Counsel;
  - b. Regional Counsel Employees (Except those reporting directly to the Regional Counsel): to the Regional Counsel;
  - c. Regional Counsel Employees reporting directly to the Regional Counsel: to the General Counsel;
  - d. Headquarters Counsel Employees: to the General Counsel;
  - e. Administrative Center Employees: to the Administrative Center Director; or

- f. Headquarters Employees (other than those of the Office of the General Counsel): to the Appropriate Executive Associate Commissioner.
3. The employee shall set forth in precise terms exactly what his or her grievance is; all the facts relating thereto, including the names of any individuals against whom the grievance is made; the Article and Section of the Agreement and any legal or regulatory provision which is in dispute, the reason for his or her dissatisfaction, and the corrective action desired. When the Union is designated as the employee's representative in a grievance, the employee will also furnish the name and address of the representative to the Employer in writing. The employee will also furnish the name and address of any witnesses in writing.
4. Within 21 calendar days after receiving the grievance, the Deciding Official (or designee) shall hold such meetings and complete such inquiry as he or she deems necessary. If the Deciding Official or designee meets with the grievant at this stage, the grievant's Union representative must have the opportunity to be present if the grievant so desires. If an attempt to adjust (i.e., resolve) the grievance is made and the employee is not represented by the Union, the Union shall be given the opportunity to have an observer present on official time if otherwise in a duty status at the time of the adjustment discussion. The Deciding Official or designee shall render a written decision on the grievance within the 21 days of receipt of the grievance. The written decision shall set forth, in precise terms, the basis of the decision.

D. Third Step.

1. The parties recognize that certain grievances filed by individual employees may have implications for the INS as a whole. Consequently, they have provided for the following optional step. If the employee is dissatisfied with the Step 2 decision and the Deciding Official is not at the INS Headquarters level, the employee may, within 21 calendar days of his or her receipt of the Step 2 decision, refer the grievance, along with all of the materials required at Step 2 and a copy of the Step 2 decision, to the Office of the General Counsel or the Office of the appropriate Executive Associate Commissioner, Headquarters for review. The General Counsel or appropriate Executive Associate Commissioner (or designee), after review by appropriate staff members, shall either:
  - a. Decline to render a decision on the merits. If the General Counsel or appropriate Executive Associate Commissioner declines to render a decision on the merits, he/she shall so notify the grievant in writing within 21 calendar days of receipt of the request to review the grievance. In such an event, the Union's time limit for invoking arbitration under Section 6 of this Article shall begin to run from the date of receipt of the notification that the General Counsel or appropriate Executive Associate Commissioner has declined to render a decision on the merits; or
  - b. Accept the grievance for decision on the merits. If the General Counsel or appropriate Executive Associate Commissioner agrees to review the grievance on the merits, he or she (or designee) shall conduct any necessary review and issue a written

decision within 30 calendar days of receipt of the request to review the Step 2 decision. In such an event, the Union's time limit for invoking arbitration under Section 6 of this Article shall begin to run from the date of receipt of the Step 3 decision by the grievant.

2. If the review of a grievance under subsection 1.a or b above involves discussions between representatives of the Employer and bargaining unit employees, the Union will be accorded the same representational rights as provided for in Step 2. If the grievant does not request review of the Step 2 decision, the time limit for invoking arbitration shall be as stated in Section 6 of this Article.
- D. If the Employer grants the precise relief requested, the grievance will not be continued on to the next step, including the invoking of arbitration by filing an R-43 with the Federal Mediation and Conciliation Service.
- E. Except as otherwise specified below, all employee grievances are to be initiated at Step 1 of the grievance procedure within the time frame as stated at Step 1.
1. The grievant shall initiate grievances that are based on the written decision or policy of the District Counsel or Administrative Center Director at Step 2 of the grievance procedure (Regional Counsel) within the time frame specified at Step 1.
  2. The grievant shall initiate grievances concerning written reprimands at Step 2 of the grievance procedure within the time frame specified at Step 1.
  3. The Union shall initiate grievances concerning suspensions and adverse actions at the arbitration stage of the grievance procedure.
- F. When the Employer or the Union has reason to believe that a grievance is not grievable or arbitrable, it will endeavor to so inform the grievant as soon as possible. If the Union or the Employer elects to proceed to arbitration of the grievance, the arbitrator who decides the merits of the grievance shall decide such grievability/arbitrability questions as a threshold issue. The arbitrator's final written decision in such a case shall consist of two parts. In the first part, the arbitrator shall decide the grievability/arbitrability issue in the case. In the second part, he or she will pass upon the grievance's merits. If the arbitrator should determine that the grievance is either not grievable or not arbitrable, however, the decision shall consist of one part, the determination on grievability/arbitrability and the arbitrator shall not consider merits of the grievance.
- G. If either party raises an arbitrability question later than seven (7) calendar days prior to the date scheduled for a hearing, the other party shall have the right to postpone the hearing, if it deems postponement necessary. The party raising the arbitrability question late shall bear any additional costs charged by the arbitrator for cancellation.

## **Section 4. Procedures for Grievances Filed by the Union or the Service**

### **A. Local Level Disputes.**

1. **Step A.** If a dispute arises between local representatives of the Union and a District Counsel Office or Administrative Center, either the local Steward (or if none, an official designated by the appropriate Regional Vice President) or the Head of the particular organizational component (or their respective designees) may file a written grievance with the other party, provided such grievance is filed within 30 calendar days after the particular act or occurrence which is the subject of the grievance or within 30 calendar days from the date on which the grievant knew, or had reason to know, of the act or occurrence. Any such grievance must include the relevant facts, the provisions of any law, rule, or contract allegedly violated, and the relief being sought. The party with whom the grievance was filed shall render a written decision on the grievance within 21 calendar days after receipt of the grievance.
2. **Step B.** If the decision on the grievance is unacceptable, the grievant may escalate the grievance to the appropriate Regional Vice-President or the appropriate Regional Counsel or the Executive Associate Commissioner, Management (for Administrative Center Grievances) for reconsideration within 21 calendar days after receipt of the Step A decision. The grievant shall include a copy of the original grievance and response when escalating the matter to the next step. The Regional Vice-President or Regional Counsel or Executive Associate Commissioner, Management (or their respective designees) shall render a written decision on the grievance within 21 calendar days of receipt. If the grievance is not resolved to the mutual satisfaction of the parties, either party to the grievance may refer the matter to arbitration within the time frame described at Section 6 of this Article.

**B. Regional Level Disputes.** If a dispute arises between regional representatives of the Union and a Regional Counsel's Office, either the appropriate Regional Vice President or the Regional Counsel (or their respective designees) may file a written grievance with the other party within 30 calendar days after the particular act or occurrence which is the subject of the grievance or within 30 calendar days from the date on which the grievant knew, or had reason to know, of the act or occurrence. The party with whom the grievance was filed shall render a written decision on the grievance within 21 calendar days after receipt of the grievance. If the grievance is not resolved to the mutual satisfaction of the parties, either party to the grievance may refer the matter to arbitration within the time frame as described in Section 6 of this Article.

**C. National Level Disputes.** If a dispute arises between the Union and Headquarters, either the Local President or the Assistant Commissioner for Human Resources and Development (or their respective designees) may file a written grievance with the other party within 30 calendar after the particular act or occurrence which is the subject of the grievance or within 30 calendar days from the date on which the grievant knew, or had reason to know, of the act or occurrence. The party with whom the grievance was filed shall render a written decision

on the grievance within 21 calendar days after receipt of the grievance. If the grievance is not resolved to the mutual satisfaction of the parties, either party to the grievance may refer the matter to arbitration within the time frame as described in Section 6 of this Article.

## **Section 5. Time Limits**

- A. The parties may, by mutual agreement, extend all time limits. If a grievant should fail to meet an applicable time limit for moving a grievance forward, the grievance shall be deemed to have been withdrawn. If a Deciding Official fails to meet the time limit for rendering a decision on the grievance, such failure shall entitle the grievant to advance the grievance to the next step (including arbitration, if appropriate) within the applicable time frame for such action as measured from the date the Deciding Official should have rendered his or her decision.
- B. All time limits of this grievance procedure, including arbitration, shall be controlling. Service of grievances and the decisions thereon, including arbitration notices, shall be accomplished either by personal delivery or any non-electronic means that provides proof of delivery. As applicable, time limits shall begin to run on the day after the date of receipt of the document that triggers the particular time limit. Service will be deemed timely if the required document is either personally delivered or documented deposit within the specified time limit. The parties agree that they will act in good faith in receipting for documents and will not attempt to evade the service of documents upon them.

## **Section 6. Arbitration**

### **A. Regular Arbitration.**

- 1. If the Employer and the Union fail to settle any grievance processed under the negotiated grievance procedures, such grievance, upon written request by the Union or the Employer, may be submitted to arbitration within 21 calendar days after the date the Employer or the Union's final decision is received. In cases involving suspensions of less than 15 days or adverse actions, requests for arbitration must be filed after receipt of the Notice of Decision, but not later than 21 calendar days after the effective date of the action. Requests for arbitration shall be submitted by the Local President or his or her designee in the case of the Union and by a District Counsel, Regional Counsel, Administrative Center Director, or the Assistant Commissioner for Human Resources and Development or his or her designee in the case of the INS. Designations of authority to invoke arbitration shall be served on the other party in writing.
- 2. When serving a request for arbitration on the other party, the Union or the Employer shall also submit a properly prepared R-43 to the Federal Mediation and Conciliation Service (FMCS) for a list of five (5) arbitrators. The parties shall telephonically select an arbitrator within 14 calendar days after receipt of such a list. If they cannot mutually agree upon one (1) of the listed arbitrators, then the Employer and the Union will each strike one (1) arbitrator's name from the list of five (5) names and will repeat this

procedure. The remaining person shall be the duly selected arbitrator. The parties shall share equally the cost of the fee charged by the FMCS for the arbitrator's list.

3. If, for any reason, either party refuses to participate in the selection of an arbitrator, the FMCS will be empowered to make a direct designation of an arbitrator to hear the case.
4. The parties shall share equally the arbitrator's fee and the expenses. Fees to be paid by the Employer will be governed by existing regulations. The arbitration hearing will be held, if possible, on the Employer's premises during the regular day shift of the basic workweek. The arbitration will be held within the commuting area of the grievant unless both parties agree to hold it in another location. All participants in the hearing shall be on official leave, if they would otherwise be in a duty status.
5. Each party will inform the other no later than 14 calendar days prior to the start of the arbitration hearing whether it desires a transcript of the hearing. If the parties mutually agree upon the need for a transcript, they shall equally share the cost of the transcript and the Employer will make the arrangements for securing a transcript. If they do not agree on the need for a transcript, the party desiring a transcript will arrange for the transcript and will bear the full cost. However, should the other party change its mind prior to the close of the arbitration hearing and indicate its desire for a copy, it shall then be responsible for half of the costs. A copy of the transcript shall not be provided to the other party absent any such timely change of mind.
6. The arbitrator will be requested to render his or her decision as quickly as possible but, in any event, no later than 30 calendar days after the conclusion of the hearing unless the parties mutually agree to extend the time limit. The moving party shall make any request to cancel a scheduled hearing at least 48 hours in advance of the date scheduled. Each party has the obligation to cooperate promptly with the designated arbitrator in setting a date for a hearing. Failure of either party to proceed with due diligence in responding to an offer of dates may serve as a basis for establishment of a hearing date by the arbitrator or dismissal of the grievance. Either party shall be given, at the other party's request, a complete list of the other parties known witnesses no later than three (3) workdays prior to the hearing.
7. The arbitrator's award shall be binding on the parties unless either party files exceptions to an award with the Federal Labor Relations Authority (the Authority) under the regulations prescribed by the Authority, except that adverse action appeals shall not be presented to the Authority.
8. Discussion of any arbitration cases where an R-43 has been issued and pending in the Region will be conducted telephonically at the request of either the Employer or the Union on a quarterly basis. Such discussions may include possible settlements in pending cases or in pending grievance matters.
9. The parties recognize the importance of promptly handling removal cases. When the moving party submits the R-43 to the FMCS, the parties will request that the arbitrator be

available to hear the case within 30 days. The R-43 will be furnished to the Union representative at the time of the Employer's final decision when the Union has been identified as the employee's representative.

B. Expedited Arbitration.

1. The parties have agreed that for cases involving removals, indefinite suspensions, and suspensions of 30 days or more, the parties may use the expedited arbitration procedure.
2. The parties may also use the expedited procedure for other cases by mutual agreement. Except to the extent that provisions of this Section are in conflict with the grievance procedure, all provisions of the grievance procedure shall be applicable to expedited arbitrations.
3. In order to provide for expedited arbitrations, the parties have agreed to the following time lines:
  - a. Arbitrators are to conduct a hearing within 30 calendar days of selection.
  - b. The parties will submit post-hearing briefs within 21 calendar days after completion of hearing or receipt of transcript unless they agree to an extension.
  - c. Arbitrators are to render a decision within 21 calendar days of closing of the record. The record will be considered closed upon receipt of briefs, receipt of transcript, or completion of hearing whichever is later.
4. In cases involving removals, indefinite suspensions, or suspensions of 30 days or more, the moving party must file a request for expedited arbitration after receipt of the Notice of Decision, but not later than 21 calendar days after the effective date of the action. The moving party shall submit a letter requesting expedited arbitration to: 1) in the case of the Union, the Servicing Human Resources Office Director of the Region in which the action was taken or to the Assistant Commissioner for Human Resources and Development for Headquarters employees; or 2) in the case of the Service, the Local President or appropriate Regional Vice-President. The Union shall include any necessary evidence of the election of arbitration by the affected employee with the request. No R-43 is to be submitted by the Union in expedited arbitration cases.
5. Upon receipt of a request for expedited arbitration as provided in subsection 4 above, the Employer will contact the arbitrators designated to handle expedited arbitrations within that Region to determine available hearing dates and will consult with the appropriate Union representative to select a mutually acceptable date. The Employer will provide written confirmation to the available arbitrator of his or her appointment to handle the hearing. If none of the designated arbitrators can conduct a hearing within 30 calendar days of selection, the parties may agree to wait for the next available arbitrator on the panel or, by mutual agreement, select an arbitrator designated in another Region. If the parties cannot agree to either wait for an arbitrator from the appropriate Regional panel or



select an arbitrator from another Region's panel, they shall select an arbitrator using the procedures set forth in Section 6.A.2 of this Agreement.

6. The parties agree to the establishment of three (3) Regional panels to handle expedited arbitrations. Each Regional panel shall consist of four (4) arbitrators. The Regional representatives of the parties will select the four (4) arbitrators for each Region by mutual agreement. Where expedited arbitration pertains to a Headquarters employee, the parties will select an arbitrator from among the designated arbitrators for the Eastern Region.
  - a. Should any arbitrator ask to be removed from the panel, the parties will jointly select a replacement.
  - b. During the life of the Agreement, either Regional party may unilaterally remove one (1) arbitrator from its panel by providing the other party with written notice. Such removal shall not be effective until 30 days after receipt of the written notice by the other party. Any additional removals must be done by mutual agreement. Selection for a replacement will be accomplished by mutual agreement.
  - c. When there is a change in the panel of arbitrators, the Regional Representatives of the parties will notify their respective counterparts in the other Regions of the change so that the list can be updated.
7. The provisions of the regular arbitration procedure concerning cancellation of a hearing will apply to the expedited procedure. If a cancellation fee is incurred in either regular or expedited arbitration, the party withdrawing from arbitration shall be responsible for the full cost of such cancellation fee unless the cancellation is by mutual agreement or a settlement. When cancellation is by mutual agreement or settlement, any costs will be shared equally or pursuant to the terms of the settlement.

## **ARTICLE 23**

### **EMPLOYEE ASSISTANCE PROGRAM**

- A. Under the Employee Assistance Program (EAP) the Employer agrees to continue efforts to identify, counsel and assist in rehabilitating employees with alcohol, drug related, or personal problems which may adversely affect job performance. The Union agrees to cooperate fully with the Employer in this program, while complying with the provisions for confidentiality in safeguarding client information.
- B. The Employer agrees to provide an orientation for Union officials concerning EAP policies, referral procedures and program resources.
- C. The Employer recognizes its responsibility to identify and make reasonable effort at rehabilitation of employees with alcohol or drug problems at an early stage. Employees undergoing a prescribed program of treatment will be granted sick leave for this purpose on

the same basis as any other illness that requires absence from work.

- D. The Employer and the Union jointly agree that employees entering the EAP are not immune from disciplinary action. However, the fact that an employee is actively pursuing, or indicates a commitment to enter an established program of rehabilitation will be given weight in considering appropriate disciplinary action.

## **ARTICLE 24**

### **DURATION**

- A. The foregoing Articles constitute the entire Agreement, and there shall be no side agreements or understandings, written or implied, other than those embodied in the Agreement, except for the agreement to reopen for Performance Appraisal and Awards. The parties have had full opportunity to raise any and all issues during negotiations. This Agreement represents the sum total of the terms and conditions that the parties agree to abide by for its duration.
- B. This Agreement shall take effect on the date that it is signed by the Commissioner and the President of the American Federation of Government Employees (or their respective designees) and shall remain in effect for three (3) years from that date. If either party subsequently desires to renegotiate this Agreement, it will furnish written notice to the other party containing the proposed changes not less than 180 days but not more than 210 days prior to the termination of this Agreement. If neither party desires to renegotiate the Agreement, the parties shall execute new signatures and dates, and the Agreement shall be renewed for a one (1) year period.
- C. In the event notice is given by either party, renegotiations shall begin within 60 days from the date of receipt of notice of the proposed changes.
- D. Ground rules shall be negotiated 150 days prior to the expiration date of the Agreement. Any matters remaining in dispute at the expiration of the Agreement shall be forwarded to the appropriate 3rd party for resolution.
- E. This Agreement supercedes any national, local, or regional formal agreements in effect prior to the effective date of the collective bargaining agreement.

**APPENDIX A**

**VOLUNTARY TEMPORARY ASSIGNMENT REQUEST**

Temporary Assignment \_\_\_\_\_

Volunteer's Name \_\_\_\_\_

Duty Station \_\_\_\_\_ GS Level \_\_\_\_\_ Seniority date \_\_\_\_\_

Briefly describe any special skills, knowledge and abilities you have that may relate to this assignment:

List all your temporary assignments (i.e. Details, temporary duties, temporary promotions) within the past three years.

List any current assignments/workload that may be affected.

Request was submitted to:

\_\_\_\_\_  
Supervisor

\_\_\_\_\_  
Date

**APPENDIX B**

**TEMPORARY ASSIGNMENT EXEMPTION FORM**

Name \_\_\_\_\_

District /Office \_\_\_\_\_

Date of Employment with General Counsel \_\_\_\_\_

Date of Request \_\_\_\_\_ Duration of Request \_\_\_\_\_

Reason for Exemption:

Medical documentation provided:

*Certification: I understand that a request and grant of an exemption from temporary duty assignments will cover both voluntary and involuntary assignments for the period of time requested. The grant of an exemption will be for a maximum period of six months, subject to a renewed request and evaluation.*

*I further understand that exigent mission requirements may suspend the temporary exemption, and I may be subject to an involuntary assignment.*

\_\_\_\_\_  
Employee

\_\_\_\_\_  
Date

Approved \_\_\_\_\_

Denied \_\_\_\_\_

Reasons for denial:

\_\_\_\_\_  
Supervisor

\_\_\_\_\_  
Date

## APPENDIX C

### TELECOMMUTING WORK AGREEMENT

The following constitutes an agreement of the telecommuting work arrangement between:

\_\_\_\_\_  
Employee

\_\_\_\_\_  
Supervisor

1. This agreement will begin on \_\_\_\_\_ and will continue until:  
\_\_\_\_\_
2. The employee will telecommute on the following days: \_\_\_\_\_
3. The Employee's normal duty location: \_\_\_\_\_
4. The alternate work site is: \_\_\_\_\_
5. A description of the work area at the alternate work site is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Unless otherwise instructed, the employee agrees to perform official duties only at the normal duty location or Agency-approved alternate work site. The employee agrees not to conduct personal business while in official duty status at the alternate work site, for example, caring for dependents or making home repairs.
7. All pay, special salary rates, leave, and travel entitlements will be based on the employee's official duty station.
8. Federal policy and procedures governing certification of time and attendance require employees to ensure that they are working when scheduled and that absences are recorded. The employee's timekeeper will have a copy of the employee's telecommuting schedule. The employee's time and attendance will be recorded as performing official duties at the official duty station.
9. The employee must follow established office procedures for requesting and obtaining approval of leave, to include obtaining supervisory approval prior to taking leave.

10. The employee will work overtime only when ordered and approved by the supervisor in advance and in accordance with laws and regulations.
11. The employee will protect any Government-owned equipment and use the equipment only for official purposes. The Agency agrees to service, and maintain any Government-owned equipment or software issued to the employee.
12. The Agency will provide the employee with all necessary office supplies. It will also reimburse the employee for authorized expenses incurred while conducting business for the Government, as provided for by law and regulations, including business-related long distance calls. However, the Agency will not be responsible for operating costs, home maintenance, insurance, or any other incidental costs (for example, utilities) associated with the use of the employee's residence.
13. The employee understands that the Government will not be liable for damages to an employee's personal property while the employee is working at the approved alternate work site, except to the extent allowed under the Federal Tort Claims Act or the Military Personnel and Civilian Employees Claims Act. The employee will install, service, and maintain any personal equipment used.

The following Government owned equipment is located at the work site: \_\_\_\_\_

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14. If the alternate work site is not a government office, the employee will provide a work area adequate for performance of official duties.
  15. The employee is to comply with appropriate health and safety regulations. The employee understands that he or she is covered under the Federal Employees Compensation Act if injured in the course of actually performing official duties at the regular office or the alternate work site. The employee agrees to notify the supervisor immediately of any accident or injury that occurs at the alternate work site and to complete any required forms. The supervisor agrees to immediately investigate such a report.
  16. Provided the employee is given reasonable advance notice, the employee agrees to permit agency inspections of the alternate work site at periodic intervals during the employee's normal working hours. The purpose of the inspection is to ensure proper maintenance of government-owned property and work site conformance with safety standards and requirements.
  17. The employee agrees to complete all assigned work according to procedures discussed with the employee and approved by the supervisor
  18. The employee agrees to protect government and agency records from unauthorized disclosure or damage and will comply with the requirements of the Privacy Act of 1974, 5 U.S.C. §§ 552a, and all other applicable records security laws, regulations, and policies.

19. The employee agrees that he or she is bound by the Standards of Ethical Conduct while working at the alternate work site.
20. Nothing in this agreement precludes the agency from taking any appropriate disciplinary or adverse action against an employee who fails to comply with the provision of this agreement.
21. Failure to comply with these provisions may result in loss of pay, termination of the telecommuting arrangement, and other disciplinary action.

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Employee's Signature

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Date

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Supervisor's Signature

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Date