Collective Bargaining Agreement

Between

U.S Department of Transportation
Pipeline and Hazardous Materials Safety Administration

and

American Federation of Government Employees
Local 3313

Table of Contents

Article 1
Preamble

This Collective Bargaining Agreement (CBA) is entered into by and between the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration, herein referred to as (PHMSA) or (the Agency), and the American Federation of Government Employees, AFL-CIO, herein referred to as (AFGE) or (the Union), also jointly referred to as the (Parties).

The Parties recognize that the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions that affect them, safeguard the public interest, contribute to the effective conduct of public business, and facilitate and encourage the amicable settlements of disputes between employees and the Agency and between the employees' Union and the Agency, involving conditions of employment; and

That the public interest demands the highest standards of employee performance and work practices to facilitate and improve employee performance, and the efficient accomplishment of the operations of the Government; and

That a mutual commitment to cooperation promotes both the efficiency of the Agency's operations and the well-being of its employees; and

That employees will be respected in the implementation and application of this CBA as well as related personnel policies and practices.

Article 2
Recognition and Unit Description

Section 1

a. This CBA covers all bargaining unit employees defined in WA-RP-13-0025 and as amended by the Federal Labor Relations Authority (FLRA) in determining matters of unit recognition.

b. If any subsequent unit of employees desires to be included in this CBA, it will require a separate and specific written agreement between that Union and the Agency.

Section 2

When a position is to be removed from the bargaining unit, the Union will be notified at least 7 calendar days prior to the effective date of the action. If the Parties do not agree whether the position is inside or outside the unit, upon request by either Party, they will meet to discuss the issue. If the matter remains unresolved, either Party may file a Clarification of Unit (CU) petition with the FLRA. If a CU petition is filed by the Union during the notice period, the position will remain in the bargaining unit until a decision is rendered by the FLRA.

Section 3

The Agency agrees to provide to the PHMSA Vice-President or designee, by the end of the first full pay period in January, April, July, and October, a list reflecting the name, grade, duty station and position title of each bargaining unit employee. The list will also identify the employees who have entered duty within the last quarter. The Parties recognize that the listing will not be construed as action, or to confer action, by the Agency to unilaterally deny bargaining unit status to any employee.

Article 3
Effect of Law and Regulation on this CBA

Section 1

In the administration of this CBA, the Parties shall be governed by all current statutes and existing government-wide rules and regulations, as defined in 5 U.S.C. § 7100 *et seq*., and by subsequently prescribed government-wide rules and regulations implementing 5 U.S.C. § 2302 (the prohibited personnel practices).

Section 2

a. Any lawful waivers of the rights given to management or the union by the Federal Service Labor Management Relations Statute, 5 U.S.C. Chapter 71, must be clearly and unmistakably set forth in a written agreement and understood to be waived by both the Union and the Agency.

b. Any prior benefits, practices, or memoranda of understanding at any level, which were in effect on the effective date of this CBA, shall remain in effect unless specifically superseded by this CBA or in accordance with 5 U.S.C. Chapter 71.

c. Where an Agency policy or regulation conflicts with this CBA or other agreement(s) between the Parties, the CBA and the agreement(s) shall govern.

Article 4
Mid-Term Bargaining

Section 1—Introduction

a. This Article sets forth the criteria and procedures to be used by the Parties when engaging in negotiations during the term of this CBA, otherwise known as Mid-Term Bargaining, and shall be administered in accordance with 5 U.S.C. Chapter 71 and this CBA.

b. Matters appropriate for Mid-Term Bargaining, as proposed by either Party, shall include those issues within the scope of bargaining that affect conditions of employment of bargaining unit employees, and are either newly formulated or changes to established personnel policies, practices, and procedures.

c. Nothing in this Article will be deemed to have waived a right of either Party under the Statute.

Section 2—Procedures for Bargaining

a. Either Party may propose a change in conditions of employment during the life of this CBA that is not already covered herein. The initiating Party will provide the other Party with reasonable advance written notice, normally not less than 15 calendar days prior to the proposed implementation date.

b. The Agency will submit, in writing to the Union, any proposed changes to workplace policies, rules, practices, or procedures that affect the working conditions of bargaining unit employees. The Agency will make a good faith effort to provide the Union adequate information about the proposed change to allow bargaining to proceed. The notice will, at a minimum, contain the following information:

1. The nature, scope, and description of the proposed change;

2. An explanation of why the proposed change is necessary;

3. A plan and proposed date for implementing the change.

c. The Agency will give the Union a reasonable amount of time to request bargaining. The Union will normally have fifteen (15) calendar days from receipt of notice to submit any written bargaining proposals to the Agency on the subject. The Union may request an extension of the period as necessary. If the Union does not submit a request to bargain and/or a written proposal on the subject, then all bargaining obligations regarding the subject will be considered satisfied and the Agency may move forward with implementing its change.

Section 3—Agreement to Negotiate

If a notice of proposed change provided under Section 2 results in a request to negotiate, the Parties will schedule a meeting to begin negotiations as soon as possible, generally no later than thirty (30) calendar days from the receipt of a request to negotiate, or as otherwise agreed to by the Parties.

Section 4—Ground Rules

Ground rules may, as necessary, be negotiated for mid-term bargaining.

Article 5
Dues Withholding

Section 1—Purpose

a. Dues withholding from bargaining unit employees shall be administered in accordance with 5 U.S.C. Chapter 71, The Federal Service Labor Management Relations Statute, as amended, and this CBA.

b. Bargaining unit employees may authorize the payment of labor organization dues to the Union by voluntarily completing a Standard Form (SF) 1187, "Request for Payroll Deductions for Labor Organization Dues" or its equivalent. Information as to which employees elect to pay dues will only be used in conducting official business and will not be disseminated to any individual without a need for this information.

Section 2—Dues Subject To Withholding

The term "dues" includes regular and periodic dues, fees, and assessments of the exclusive representative of the unit. The Agency shall honor the assignment and make allotments pursuant to the assignment. All regular and periodic dues allotments will be processed by the Parties in a timely manner.

Section 3—Allotments (Payroll Deductions)

a. Union members who desire to make an allotment for payment of dues will request such allotments by completing a SF-1187. The Union will procure the forms as needed and will make them available to the Union members. Dues allotment will be made at no cost to the employee or the Union.

b. Completed allotment forms will be submitted to the Local President or other authorized officer, who will complete the certification portion of the form. The Union, in turn, will promptly submit all such forms received from employees to the Human Resources Division for processing.

c. Allotments will be effective at the beginning of the first complete pay period following the receipt of a properly completed SF-1187 by the Agency Payroll Office. The Union may contact the PHMSA Human Resources Division for assistance in resolving discrepancies.

Section 4—Payment and Union Dues Deduction Report

a. The Agency will make a remittance to the Union for amounts withheld on a biweekly basis. The remittance will be by electronic funds transfer for the balance of the dues withheld. The means of payment will be at the Union's option.

b. The payment will be accompanied by a Union Dues Deduction Report containing:

1. Identification of the Union;

2. Total amount of the remittance;

3. Name of employee, date, the amount deducted, and an indication if it is a new allotment;

4. Names of employees for whom deductions previously authorized were not taken, with indication for reason; and

5. Total number of members for whom dues are withheld.

c. If remittance is made directly to the AFGE National Office, a copy of the Union Dues Deduction Report will be provided to the Local Union.

Section 5—Changes in Dues Withholding Amounts

The Union may change the amount of the Union dues deducted as needed. The Local President or other authorized Union officer shall forward a statement to the Human Resources Division indicating the dues change. Such statement must be received fifteen (15) calendar days prior to the first day of the pay period in which such change is to be effective. Changes will be effective the first pay period after timely receipt by the Payroll Office.

Section 6—Employee Dues Revocation

a. Union members who have authorized Union dues withholding may revoke their payroll deduction of dues once a year on the anniversary date of the first withholding by submitting SF-1188 to the Human Resources Division. A copy of the properly completed SF-1188 must be given to the Local President (or designee).

b. In order for dues deductions to be stopped, the SF-1188 must be submitted to the Human Resources Division and the Union no earlier than 30 calendar days prior to the anniversary of the effective date. SF-1188 forms submitted after the anniversary of the effective date will not be accepted. Dues deductions will stop on the pay period following the anniversary date.

Section 7—Automatic Dues Revocation

Notwithstanding the above, dues deductions will terminate with the start of the first payroll period after which any of the following occurs:

a. Loss of exclusive recognition by the Union;

b. Separation of the employee for any reason;

c. Notice to the Agency from the Union that the employee has been suspended or expelled from the membership of the Union;

d. Transfer, reassignment, promotion, or demotion of an eligible member to a position excluded from the Union's recognition; or

e. Activation of an employee into active duty military status.

Section 8—Membership Challenges

If the Agency removes or denies an employee from dues withholding based on a belief that the employee's position is outside the bargaining unit, and the FLRA determines that the Agency acted improperly, the Agency will promptly start or re-start the employee's dues withholding authorization and make the Union whole for all lost income.

Section 9—Reinstatement of Separated Employee

If an employee, who has been separated by the Agency, is reinstated by an arbitrator, the Merit Systems Protection Board (MSPB), the Equal Employment Opportunity Commission, or a court of competent authority, and the Agency is required to make the employee whole, and the employee was a Union member at the time of his or her separation, dues withholding will be restored for that employee, without submitting a new SF-1187, starting with the effective date of the reinstatement.

Article 6
Labor Management Forum

a. The Parties recognize that the participation of employees in the formulation and implementation of personnel policies and practices affects their well-being and the efficient administration of the government. The Parties further recognize that the entrance into formal agreements for the exchange of information in the broad area of personnel policy or practice at the national and local levels may contribute to the effectiveness of the labor-management relations. Therefore, the Parties have agreed to a Labor Management Forum (LMF), and a governing Charter, for the purpose of informally discussing all matters of interest or concern in the areas of personnel policies, practices and matters affecting working conditions. It is understood that any discussions in the LMF will not assume the character of formal negotiations between the Parties to this CBA. Although discussions between the Agency and the Union during the LMF meetings may result in further study of problems raised, neither the Agency nor the Union is obligated to reach agreement on the issues addressed during such discussions through the LMF.

b. The Parties also recognize that the LMF can only be effective when participation is voluntary and entered into freely and without reservation. Therefore, incorporation of this Article into the CBA does not obligate either Party to continue participation in the LMF should any future Executive Order or policy permit to the contrary.

Article 7
Management Rights

Section 1—Purpose

This Article shall be administered in accordance with 5 U.S.C. Chapter 71 and this CBA. The purpose of this Article is to set forth the statutory management rights.

Section 2

Nothing in this CBA shall affect the authority of any Agency management official:

a. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and

b. In accordance with applicable current laws:

1. to hire, assign, direct, layoff, and retain employees in the Agency or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

2. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;

3. with respect to filling positions, to make selections for appointments from:

a) among properly ranked and certified candidates for promotion; or

b) any other appropriate source; and

4. to take whatever actions may be necessary to carry out the Agency mission during emergencies.

Section 3

Nothing in this CBA shall preclude the Agency and the Union from negotiating:

a. at the election of the Agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

b. procedures which management officials of the Agency will observe in exercising any authority under this section; or

c. appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

Section 4

In general, the Agency does not waive its 5 U.S.C. § 7106 (b)(1) rights or discretion to determine the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, and the technology, methods, and means of performing work. However, any decision to waive and bargain with the Union(s) over these matters will be determined by the PHMSA Administrator or his/her written designee.

Article 8
Union and Employee Rights

Section 1—Right to Organize

In accordance with 5 U.S.C. § 7102, each employee shall have the right to join or assist the Union, or to refrain from such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided in this CBA or by law and/or regulation, such rights include:

a. The right to act for a labor organization in the capacity of a representative, and the right, in that capacity, to present the views of the labor organization to heads of Agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and

b. The right to engage in collective bargaining with respect to conditions of employment through representatives.

Section 2—Right to Representation

a. Employees have a right to the representation and assistance of the Union. Employees may contact and meet privately with a Union representative during duty hours for representational matters. The employee will be released from duties when she/he requests to exercise this right, unless there is a pressing operational necessity.

b. The Union shall be given the opportunity to provide representation at any examination of an employee by a representative of the agency in connection with an investigation if the employee reasonably believes the examination may result in disciplinary action and the employee requests representation as authorized by 5 U.S.C. § 7114(a)(2)(B).

Section 3—Communication/Surveys

a. Consistent with 5 U.S.C. Chapter 71, the Agency will not communicate directly with employees regarding conditions of employment in a manner that will improperly bypass the Union.

b. Surveys- The Agency will provide the Union with reasonable advance written notice of surveys concerning conditions of employment that involve bargaining unit employees. The Agency will also provide the Union with an advance written copy of survey results as soon as possible.

Section 4—Personal Rights

a. Agency managers and employees will deal with each other in a professional manner and with courtesy, dignity, and respect, and to the extent possible, supervisors will hold discussions with employees regarding performance and conduct in private.

b. If an employee is to be served with a warrant or subpoena, it will be done in private to the extent that the Agency has knowledge of and can control the situation.

c. Agency management may not discipline an employee who refuses to obey an order that is found to be unlawful.

d. Employees shall have the right while off-duty to direct and fully pursue their private lives, personal welfare, and personal beliefs without interference, unless the off-duty conduct violates a government law, rule, regulation, or otherwise interferes with the efficiency of the service.

e. Employees facing termination may resign freely in accordance with prevailing regulations at any time prior to the effective date of the termination. It shall not be the standard practice for the Agency to have the police accompany/escort employees off the premises who have chosen to resign. The employee may withdraw his or her resignation prior to the effective date, as long as the position is uncommitted or unencumbered.

f. An employee's decision to resign or retire, if eligible, shall be made freely and in accordance with prevailing regulations.

Section 5—Break Areas

The Agency will provide employees with access to clean and comfortable break areas in proximity to their work areas. To the extent funding is available and in accordance with General Services Administration regulations and law, the break areas will include kitchen facilities including sinks, refrigerators, and appliances for heating food, making coffee and tea, etc. These areas will be away from customers, clients, and other non- employees whenever possible.

Section 6—Timely and Accurate Compensation

a. Employees are entitled to timely receipt of all compensation earned by them for the applicable pay period. The Agency will make every effort to ensure that employees receive their pay on the established payday and at the address or electronic site designated by the employee in accordance with Department of Treasury rules and regulations.

b. If the Agency fails to deliver a bargaining unit employee's earned pay (including overtime, holiday, night, and weekend pay) on the established payday, the Agency, upon request by the employee, will authorize an emergency payment in accordance with law and regulation.

Section 7—Whistleblower Protection

Employees are protected by the Whistleblower Protection Act of 1989, and the Whistleblower Protection Enhancement Amendments of 2012, against reprisal for the lawful disclosure of information that the employee reasonably believes evidences a violation of law, rule, or regulation, or evidences mismanagement, a waste of funds, an abuse of authority, or a danger to health or safety.

Section 8—Voluntary Activities

Contributions to the Combined Federal Campaign, purchase of U.S. bonds in any bond drive, and blood donations are voluntary activities. Participation or nonparticipation will not advantage or disadvantage employees.

Section 9—Statutory Requirements

Personnel management will be conducted in accordance with 5 U.S.C. § 2301, Merit System Principles, and 5 U.S.C. § 2302, Prohibited Personnel Practices.

Section 10—Union Rights

a. The Union will designate its own representatives and notify the Agency, on a current basis, of the name, title, and work location of its representatives. In turn, the Agency will inform new bargaining unit employees, or employees transferring between stations, upon entering on duty, of the name of the Union representative(s) at their locality and the PHMSA Vice-President.

b. Consistent with 5 U.S.C. § 7114(a)(1) and (2), as the exclusive representative of unit employees, the Union is entitled to act for, and negotiate collective bargaining agreements covering all employees in the unit. As the exclusive representative, the Union is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership. The Union has the right to attend any formal discussion between one or more Agency representatives and one or more bargaining unit employees concerning any grievance, certain formal EEO complaint settlement discussions, or any personnel policy or practices or other general condition of employment. The Agency will give the Union sufficient advance notice to exercise its rights under this section.

c. At the start of any formal discussion, the Agency representative will ask a Union representative who may be present to introduce themselves. Furthermore, the Agency management representative will permit the Union representative to ask relevant questions, to present a brief statement before the end of the meeting outlining the Union's position concerning the issues presented by the Agency, and to have full participatory rights during the meeting.

Article 9
Official Time

Section 1—Purpose

a. The purpose of official time is to provide bargaining unit employees time to conduct Union representational activities during normal working hours, without loss of pay or charge to annual leave. This Article provides an equitable process for the allocation and approval of official time and recognizes that the appropriate use of official time benefits both Agency management and the Union.

b. Official time in the Agency shall be administered in accordance with 5 U.S.C. Chapter 71, The Federal Service Labor Management Relations Statute (the Statute) as amended, and this CBA.

Section 2—Representational Functions

a. Elected or appointed Union representatives may use official time for representational purposes as provided by the Statute during such time as they are otherwise in a duty status. This time will be without charge to leave.

b. Only those Union representatives for whom the Agency has received a written designation will be recognized. The Union will provide written notification to the Agency of the names of each person designated as Union officers, points of contact, and stewards, after their designation. The Union will also provide written notification of any change in designation of Union representatives.

c. Official time is prohibited for any activities performed by any employee relating to the internal business of the Union, including the solicitation of membership, elections of Union officials, and collection of dues.

d. Official time for employees and representatives is provided under separate authority to participate in certain statutory appeal procedures. This includes, but is not limited to, proceedings before the FLRA, the MSPB, and the EEOC. Such official time is not limited by this Article, and will not be charged against any amount of official time granted to the Union under this CBA.

Section 3—Release Procedures for Representational Official Time Use

a. Union representatives will be permitted to leave their assigned work area on official time as authorized under this CBA after reporting to their immediate supervisor or appropriate management official and identifying the purpose of their activity. The official time will be reported, approved and tracked in the Agency's time and attendance system. The representative will be released as requested, verbally or in writing, unless the representative's absence would unduly interfere with operational requirements. If the

representative cannot be released at the time of the request, the representative and the supervisor will arrive at a mutually agreeable time for release, normally within twenty-four (24) hours. The Union representative will be given time to inform bargaining unit employees involved in the delay, and the matter delayed as well.

b. When the Union representative needs to leave the work site and his or her supervisor is temporarily absent from the site and there is no other management official available to receive the request, the representative will attempt to contact the supervisor by telephone. If that fails, the representative will notify the supervisor by telephone voice mail, or by sending an email message indicating where he or she is and approximately how long he or she will be gone.

c. On occasion, discussions between the Union representative and the employee may take longer than originally anticipated. In these cases, both may contact their supervisors telephonically or by email to notify them of the need to extend the anticipated return time and request approval for additional time.

Section 4—Allocation of Official Time

The Agency will provide Union representatives a reasonable amount of official time under the provisions of 5 U.S.C. § 7131(d) to prepare for and carry out statutory representational functions (e.g., attendance at formal discussions or negotiations, preparation of grievances, preparation of informational material regarding employee rights and representational activity, and preparation for arbitration). Use of official time must be requested and approved in advance in a manner consistent with the terms of this agreement.

Section 5—Training

Consistent with the Agency mission requirements, the Agency agrees to grant up to 160 hours of official time per calendar year to the Union, to attend labor relations training or other training related to employees' conditions of employment. Training under this section will generally cover such areas as contract administration, handling of statutory actions such as grievances and information related to federal labor relations laws, regulations, and procedures. The Union may request additional hours of official time for training. A Union representative may not attend the same training within a one (1) year period. Training conducted jointly with management and the Union will not count against the balance of training hours listed above.

Article 10
Union Office Space and Services

Section 1—Union Office Space, Furnishings, and Equipment

Union office space, furniture, and equipment is negotiated at the Local 3313 President level.

Section 2—Bulletin Boards

Physical and electronic bulletin boards for posting Union information and notices will be made available to the Union and will not be subject to editorial review by the Agency. The Union shall not use the bulletin boards as a means of expressly soliciting new membership.

Section 3—Email

The Union may communicate with Agency officials, bargaining unit employees, neutral third Parties, or members of the public via the Agency's email system regarding representation issues. This includes, but is not limited to, the use of Agency email to send electronic filings regarding representational matters.

Section 4—Distribution of Literature

Official publications of the Union, which may include newsletters, fliers, or other notices, may be distributed on Agency property by Union representatives during approved official time or non-duty time in non-work areas. Where available, Union representatives will use centralized employee mail slots/drops to distribute Union publications. Distribution shall be accomplished so as not to disrupt operations. All such materials shall be properly identified as official Union issuances.

Article 11
Use of Facilities & Equipment

Section 1—Access to Agency Office Space/Conference Rooms

At the request of the Union, and subject to availability, temporary space will be made available for meetings of the Union during non-duty hours of the employees involved. The Union agrees to exercise reasonable care in using such space and will leave it in as clean and orderly condition as it was prior to the meeting.

Section 2—Break Rooms/Areas

It is understood that Union officials may have access to employee break rooms/areas. Union officials not assigned to that facility will notify management when entering the facility. When a break room is to be used for a Union event, the Union will request access from the appropriate management official as much in advance as possible.

Section 3—Electronic Equipment

a. It is understood that employees do not have the right to privacy while using any government office equipment (e.g. telephone, computer, etc.) and that the use of such equipment is not secure, private, or anonymous, and is subject to monitoring. For example, when a government personal computer is used to read or respond to email sent to a non-government email address *(*e.g., AOL, Yahoo, MSN etc.*),* this use can be viewed by others and monitored.

b. Specific monitoring of personal or official use of government-owned equipment will be conducted only for legitimate Agency purposes.

c. The Parties recognize that the internet, intranet, and email traffic is traceable and identifiable as to its source; therefore, employees should be aware of the impression such use will have on the public.

d. Personal use of government telephones and computers is authorized when:

   1. it involves no or minimal additional expense to the government;

   2. it does not reduce the employee's productivity;

   3. it does not interfere with the official duties of other employees; or

   4. it is used during non-work time.

e. The equipment is normally authorized for use by the employee for official government business *(the Agency is not required to supply employees with equipment if such equipment is not required to perform the employee's official government business).*

f. Employees must ensure that personal use of government equipment does not give the appearance that they are acting in an official capacity on behalf of the Agency. When the official capacity of the user could cause such a question by the public, an appropriate disclaimer should be provided.

g. Agency information will not be posted on external news groups, bulletin boards, or other public forums without official authorization.

h. The Agency will provide employees with effective equipment and sufficient resources to perform the functions of their job assignments while on official travel.

i. Brief personal telephone calls at work by employees are acceptable, provided these do not interfere with work production, office efficiency, or are contrary to written policy. The Union will be notified and provided a copy of any policy change contrary to this provision.

j. Restrictions on the carry and use of personal and government equipment are subject to this Article, and changes shall not be implemented unless bargained in accordance with the Mid-Term Bargaining Article of this CBA.

Article 12
Hours of Work

This Article will be administered in accordance with 5 U.S.C. Chapter 61, 5 C.F.R. Part610, the Fair Labor Standards Act, and this Agreement.

Section 1—General Provisions

a. The official business hours of PHMSA Headquarters are 8:30 a.m. to 5:00 p.m. Monday through Friday. Offices may establish different official business hours due to operational requirements or geographical or organizational differences.

b. Standard Work Schedules consist of ten (10) fixed eight (8)-hour days in a bi- weekly pay period. Schedule changes within the administrative work week will not be used solely to avoid overtime pay unless it would seriously handicap the Agency in carrying out its functions or would substantially increase costs. Upon request, the Agency will provide the Union a written rationale for changing these work schedules.

c. Regular Day Off (RDO) is a calendar day, to include Saturday and Sunday, that an employee is not scheduled to work under a standard or alternative work schedule.

d. Core Hours are designated periods when employees must be on duty, on approved leave, or on an RDO. The core hours for PHMSA are 9:00 a.m. to 3:00 p.m.

Section 2—Alternative Work Schedule (AWS) Program

a. Pursuant to DOT policy, the Agency has implemented Compressed Work Schedules (CWS). Normally, a CWS is scheduled between 6:00 a.m. and 6:00 p.m.

   5-4/9 work schedules consist of a fixed schedule within a bi-weekly pay period, with a nine (9) hour work requirement for eight (8) days, an eight (8) hour work requirement for one (1) day, and one additional RDO, to complete the basic work requirement of eighty (80) hours per bi-weekly pay period;

b. The Agency has the authority to determine which positions may use an AWS. The approval of a specific work schedule may be delegated to first-line supervisors. Only supervisors who have delegated authority may approve an AWS for specific employees.

c. Consistent with mission requirements, upon request by an employee, the Agency will be flexible in approving participation by employees in the AWS program and employees' selection of specific AWS plans. Employees ineligible to work an AWS based on operational requirements will be provided with the justification for the decision. The reasons for denial of an AWS schedule must be consistent with the AWS Statute and the Agency shall provide an explanation in writing, upon request from the employee or the Union.

d. Changes to RDO in an AWS are subject to supervisor approval.

e. When necessary, an AWS may be adjusted to a standard work schedule when the employee is on official training, travel, or another temporary work assignment.

f. When considering the removal of an employee from an AWS based on performance, the Agency will identify in writing the specific connection between the schedule and the employee's performance.

Section 3—Employee Work Schedules

a. The Agency retains the right to determine the work objectives of any given unit and to disapprove any work schedule that does not allow those objectives to be met. Supervisors, with the involvement of their employees, shall develop employee tours of duty/work schedules that provide for adequate office coverage during official hours and days of operation and are otherwise necessary to accomplish the Agency's mission. Supervisors may adjust work schedules to ensure adequate office coverage, accommodate training, and ensure service to the public. Upon request, the supervisor will provide to the employee(s) the reason for the denial or change.

b. The Agency will consider changes in individual schedules or assignments to permanent shifts requested by employees to pursue further self-development activities when completion of the courses will equip the employee for more effective work within the Agency.

c. When operational requirements require a change in an employee's permanent schedule, supervisors shall provide the employee with written notice of the change in advance, except in unusual circumstances (e.g., unforeseen work requirements, special projects, or natural disaster).

d. Employees may be required to post their daily work status to include RDO, travel, leave and telework, along with official contact information outside their workstations.

e. Except in emergencies, employees will not normally be required to report to work unless they have had at least eight (8) hours off-duty time between work tours. Exceptions may be made with the agreement of the employee and approval of the supervisor. This will not preclude work on an overtime basis, as dictated by the equitable system in place for fairness in overtime assignments.

f. Prior to changing or discontinuing an authorized work schedule, employees must submit a request to their supervisor in advance for approval prior to the start of the pay period when the change will occur.

Section 4—Meal/Lunch Periods

a. Meal/lunch periods are thirty (30) minutes in duration, must be scheduled as close to the middle of an employee's tour of duty as possible, and cannot be taken at the beginning or end of a shift.

b. Meal/lunch periods are not compensable work time and the meal/lunch period must be added to the employee's workday. For example, if the employee has an eight (8) hour work requirement, he or she must account for an eight and a half hour day in the agency's time and attendance accounting system to offset the half hour meal period.

c. Meal/lunch periods should be staggered to ensure adequate office coverage.

Section 5—Adjustment of Work Schedules For Religious Observance

An employee whose personal religious beliefs require that he or she abstain from work at certain times of the workday or workweek must be permitted to work alternative hours so that the employee can meet the religious obligation, unless it would cause undue hardship on the Agency's business. Disapprovals will be given to the employee in writing within two (2) business days of the request.

Section 6—General Rules for Days In-Lieu of Holidays

a. If a holiday falls on a Saturday, the preceding Friday is the in-lieu-of holiday;

b. If a holiday falls on Sunday, the following Monday is the in-lieu-of holiday;

c. If a holiday falls on the non-workday of an employee, other than Saturday or Sunday, the preceding workday is normally the employee's in-lieu-of holiday.

d. RDO adjustments required by a scheduled holiday or day in-lieu of holiday will be determined by the supervisor in consultation with the employee.

Section 7—Breaks

a. Supervisors will authorize employees a fifteen (15) minute break for each four hours of work. Breaks will be staggered to ensure continuity of Agency operations. There will be no charge to employees' leave for such breaks. Employees may leave the work area during a break.

b. Combining fifteen (15) minute breaks with the meal period or using breaks to arrive late or depart work early is not authorized.

c. Work in excess of normal work schedules will include a fifteen (15) minute break period after every two (2) hours of work.

Section 8—Changes in the Agency's Alternative Work Schedule Program

It is agreed that following the implementation of this CBA, the matter of AWS, including a 4-10 work schedule, will remain open for bargaining purposes, and should either Party request to negotiate over the AWS issue, the moving Party will submit its written proposals to the other Party and negotiations will commence as the Parties agree.

Article 13
Overtime

Section 1—General

a. Employees shall be compensated for overtime hours worked in accordance with the provisions of the Fair Labor Standards Act (FLSA), 5 U.S.C. § 5542 (Title 5 Overtime), other applicable statutes, government-wide regulations, and provisions of this CBA. When a given work situation is covered by the FLSA and another statutory procedure, the employee shall receive the more favorable treatment.

b. All bargaining unit positions will be determined to be FLSA "exempt" or "non- exempt" at the time the position is classified. When classification actions are proposed that will result in a change to the FLSA determination, the proposed changes will be provided to the employees and the Union thirty (30) calendar days prior to the effective date.

c. Overtime will not be distributed or withheld to reward or penalize employees. Management will ensure fair and equitable assignments of overtime work.

Section 2—Overtime Pay

a. Overtime pay for FLSA non-exempt employees is equal to one and one-half (1½) times the employee's hourly rate of pay.

b. Overtime pay for FLSA exempt employees is equal to one and one-half (1 ½) times the employee's hourly rate of pay. However, if the employee's rate of pay exceeds the rate for a GS-10, Step 1, including any applicable special rate of pay or special pay adjustments, a locality-based comparability payment, or any applicable special rate of pay, the overtime rate is the greater of:

1. 1 1/2 times the applicable minimum hourly rate of basic pay for GS-10, Step 1; or

2. The employee's hourly rate of basic pay.

Section 3—Types of Overtime

a. Regularly Scheduled Overtime
Any overtime work scheduled in advance of the administrative workweek as part of an employee's regularly scheduled workweek is considered regular overtime. An employee shall be compensated for every minute of regular overtime work, in 15 minute increments, in accordance with the provisions of OPM regulations.

b. Irregular or Occasional Overtime
Overtime work that was not scheduled in advance of the administrative workweek and made a part of an employee's regularly scheduled workweek is considered irregular or

occasional overtime. Irregular or occasional overtime work is paid in accordance with the Fair Labor Standards Act, the same as regular overtime work, unless the employee requests in writing to receive compensatory time off in lieu of overtime premium pay.

Section 4—Notice

If an offer or assignment of overtime is on days outside of the basic workweek, to include holiday work, the Agency will normally notify the affected employee at least seven (7) calendar days in advance, except in cases of unforeseen mission requirements.

Section 5—Impact on Leave

a. Leave usage or balance will not be a factor in offering or assigning employees overtime. However, employees in a leave status will not be offered or assigned overtime until they return to duty. Overtime in conjunction with leave usage in the same pay period is permitted.

b. Employees on Military Leave under 5 U.S.C. § 6323(a) or Court Leave under 5 U.S.C. § 6322 are entitled to the same compensation they would have otherwise received but for their absence on military or court leave. This overtime duty must be regularly scheduled overtime work which would have otherwise required the employee to work overtime.

Section 6—Compensatory Time in Lieu of Overtime Pay

a. For FLSA non-exempt employees, the Agency shall provide overtime pay for all overtime work performed. After considering mission requirements, the Agency may grant compensatory time off for overtime work performed; however, non- exempt employees shall not be required to accept compensatory time off in lieu of payment for any overtime work performed. The Agency will consider employee initiated requests, in writing, for compensatory time off in lieu of overtime pay.

b. Compensatory time off earned must be used by the end of the 26th pay period after such time was earned.

c. Upon expiration of twenty-six (26) pay periods or upon separation of the employee from the Agency, the Agency will pay FLSA non-exempt employees for any unused compensatory time off earned in lieu of overtime pay to the employee's credit, at the overtime rate in effect when the compensatory time off was earned.

d. FLSA exempt employees' earned compensatory time off will be forfeited if not used prior to expiration of twenty-six (26) pay periods. However, if an employee is prevented from using compensatory time off due to an exigency of the Agency's business, the unused compensatory time off will be paid out at the overtime rate in effect when earned.

e. For FLSA exempt employees, whose rate of pay does not exceed the rate for GS-10, Step

10, may request, in writing, to receive compensatory time off in lieu of overtime pay for irregular or occasional overtime. Such written requests will normally be granted, subject to mission requirements. If the employee does not make such a written request, or if the Agency does not approve that request, the employee is entitled to compensation in accordance with the overtime requirements.

Section 7—Standby Duty and On-Call

a. Standby duty:
Time spent on standby duty is hours of work if, for work-related reasons, the employee is restricted by official order to a designated post of duty and is assigned to be in a state of readiness to perform work with limitations on the employee's activities so substantial that the employee cannot use the time effectively for his or her own purposes.

b. On-call status:
An employee is off duty, and time spent in an on-call status is not hours of work if:

1. The employee is allowed to leave a telephone number or carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius; or

2. The employee is allowed to make arrangements for another qualified person to perform any work that may arise during the on-call period.

Article 14
Annual Leave

Section 1—Authority

The rules, policies, and procedures applicable to leave will be consistent with those set forth in 5 U.S.C. Chapter 63 and 5 C.F.R. Part 630.

Section 2—Annual Leave

a. Accrual: Annual Leave will be earned, accrued, approved, and used in accordance with applicable laws and regulations.

b. Scheduling: The supervisor agrees to manage the scheduling of annual leave in a manner that permits each employee in the bargaining unit to take vacation time. Organizations may restrict the scheduling of leave during certain periods for operational reasons, e.g., fiscal year closeout, provided employees and the union are given prior notice, normally fifteen (15) calendar days.

c. Requests:

1. Employees may request annual leave in fifteen (15) minute increments. Annual leave may not be charged in increments of less than fifteen (15) minutes.

2. Employees will apply in advance for approval of anticipated leave. Leave requests and approval or denial (and reasons for denial) will be made in writing using the established PHMSA leave request processes. Changes to previously authorized annual leave to sick leave will be in accordance with 5 C.F.R. § 630.406.

3. Requests for annual leave should be made to an employee's supervisor as far in advance as is practicable. At a minimum, all requests for annual leave in excess of one (1) day must be made in advance through the time and attendance system. Employees will be informed in a timely manner of whether their requests for leave have been approved, normally within five (5) business days of the request. When requests are made to use leave on the following day, the response will be made as soon as possible, but no later than the end of the employee's work shift.

d. Requests for Unscheduled Leave:

1. If the need for leave cannot be anticipated, the employee shall attempt to contact the immediate supervisor or designated official to request approval of unscheduled leave by telephone within one (1) hour after the start of the employee's normal work day, or as soon as possible thereafter. In the event that either the supervisor or other designated official is not available, the employee may utilize voice mail or email to notify the Agency of the need for unscheduled leave. If the leave cannot be granted, the supervisor will notify the employee within two (2) hours of the employee's

request that it cannot be granted.

2. The supervisor normally will grant annual leave requests not made in advance unless the supervisor has sound reasons to believe that a legitimate emergency does not exist or the employee's presence on duty is necessary for the mission. When an emergency requires more than one day of leave, the approving supervisor will inform the employee of any requirement for requesting approval on a day-to-day basis thereafter unless the employee requests more than one day initially.

e. Explanations for Requests: A supervisor may not require an employee to provide a detailed explanation for why he or she wishes to take annual leave. Instead, when requesting annual leave, an employee may state that the purpose for the leave is for personal reasons.

f. Multiple Requests: When a supervisor receives requests for annual leave from more than one employee for a given period and cannot grant all requests due to the work needs of the office, an effort should be made by the employees involved to resolve the conflict. If the employees cannot resolve the conflict, the supervisor will use a random selection process to resolve the conflict that is mutually acceptable to the affected employees. All affected bargaining unit employees should be present during the random selection process. This section does not require cancellation of previously approved leave when a request for the same period is received after the approval.

g. Annual Use-or-Lose Notice: The Agency will provide employees with annual notice of the date by which employees must use leave not eligible to be carried over to the following year ("use or lose"). Supervisors should encourage employees to schedule and use annual leave throughout the year.

h. Advancing Annual Leave: The Agency may grant an employee's request for advanced annual leave in situations where the employee lacks sufficient leave to cover the period being requested, but will earn enough leave to cover the amount of the advance by the end of the leave year; provided that workload permits a granting of leave and it is anticipated that the employee will remain an employee through the end of the leave year.

i. Annual Leave for Union Representatives: Subject to workload considerations, an employee who is a steward or other Union official will be granted annual leave or Leave Without Pay (LWOP) to attend internal Union functions that are not covered by Official Time as set forth in this CBA. Normally, an advanced notice of seven (7) calendar days will be required.

Article 15
Sick Leave

Section 1—Accrual and Approval

a. Employees will earn and accrue sick leave in accordance with applicable law and regulations. Employees may utilize sick leave in fifteen (15) minute increments.

b. The Agency will approve an employee's request for sick leave when the employee:

1. Is scheduled to receive medical, dental, or optical examination or treatment;

2. Is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;

3. (a) Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment; or

(b) Provides care for a family member with a serious health condition;

4. Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;

5. Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or

6. Must be absent from duty for purposes relating to his or her adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

c. Employees shall contact the immediate supervisor or designated official to request approval of unscheduled sick leave by telephone, or email, prior to the start of the employee's normal work day, but no later than one (1) hour after the start of the employee's normal work day unless a medical emergency precludes such notification.

d. In the event that the supervisor or designated official is unavailable, the employee may leave a voice mail message, or email, to notify the supervisor of the need for unscheduled sick leave. Failure to request sick leave within one (1) hours of the time established to report for duty will not be the sole reason to deny sick leave. An employee may use a surrogate to contact the supervisor in cases where the employee is not capable of contacting the supervisor.

Section 2—Substitution of Annual Leave for Sick Leave

Upon request by the employee, an approved absence that otherwise would be chargeable to sick leave may be charged to annual leave. Employees should make every reasonable effort to request such changes prior to certification of the time and attendance submission for that pay period.

Section 3—Scheduling

Employees should schedule non-emergency medical, dental, optical, psychological, or alcohol/drug counseling appointments as far in advance as practicable and should request sick leave in advance for such appointments.

Section 4—Denials of Sick Leave Requests

a. When an employee submits administratively acceptable evidence of illness or incapacitation prior to disciplinary action being taken, the employee is entitled to sick leave and may not be denied sick leave solely based on the failure to follow proper sick leave procedures and may not be charged with Absence Without Leave (AWOL).

b. Denials of sick leave requests will be based on consistent and valid mission related reasons. The supervisor will notify the employee of the denial as soon as possible, normally not more than two (2) hours after the employee's request. Other than a leave abuse situation, the employee will be charged sick leave while awaiting approval and will be given a reasonable amount of time to report to work without a charge of AWOL.

Section 5—Administratively Acceptable Evidence

a. Supervisors may require employees to provide administratively acceptable documentation to substantiate a sick leave request that exceeds three (3) consecutive work days. Administratively acceptable evidence may be, but is not limited to, an employee's self-certification or a medical certificate.

b. Employees will not normally be required to furnish administratively acceptable evidence to substantiate a request for approval of sick leave for three (3) consecutive work days or less unless they have been formally placed on sick leave restriction or the supervisor reasonably believes that a request for sick leave is not legitimate.

Section 6—Sick Leave Restriction

a. If a supervisor reasonably believes that an employee is abusing sick leave by excessive unscheduled sick leave requests or by a pattern of absences associated with days off or other questionable timing, a supervisor may take the following measures to restrict the employee's use of sick leave:

1. Counseling: The supervisor first will counsel the employee verbally and maintain a record of the counseling.

2. Written Notice: If the employee's use of sick leave continues to indicate abuse subsequent to the verbal counseling, the supervisor will provide to the employee written notice that the employee must submit documentation for sick leave requests, and administratively acceptable medical documentation to substantiate future absences for which sick leave is requested, regardless of the duration of the absences.

3. Six Month Review: After six (6) months and at six-month intervals thereafter, the supervisor will review the requirement that documentation be provided by the employee to support all requests for sick leave for the purpose of deciding whether to continue this requirement. Concurrent with the initial and each subsequent review, the supervisor will advise the employee, in writing, whether documentation will continue to be required. The employee will be notified in writing when he or she is no longer on sick leave restriction.

4. Absence Without Leave (AWOL): An employee may be charged with AWOL and be subject to disciplinary action if the employee fails to submit administratively acceptable documentation to support a sick leave request, as communicated to the employee by the supervisor.

5. Except when noticeably sick, employees on sick leave restriction who request to be released from duty because of illness will be required to furnish medical documentation to substantiate sick leave for the time they were released from duty.

6. An employee suffering from a chronic medical condition and who has furnished administratively acceptable medical documentation of a medical condition shall not be required to furnish additional medical documentation to substantiate a sick leave request for subsequent occurrences of the same condition. However, the Agency may periodically require further medical certification to substantiate the continued existence of the medical condition.

Section 7—Advanced Sick Leave

a. Employees may request advance sick leave in accordance with 5 C.F.R. § 630.402.

b. Requests for advance sick leave will normally be granted in accordance with governing regulations when all of the following conditions are met:

   1. The employee is eligible to earn sick leave;

   2. The employee's request does not exceed 240 hours, or for temporary employees only the amount to be earned during the period of temporary employment if appropriate;

3. There is no reason to believe the employee will not return to work after having used the leave, and the employee has sufficient funds in his or her retirement account or any other source of monies owed to the employee by the government to reimburse the Agency for the advance, should the employee not return to work;

4. The employee has provided acceptable medical documentation of the need for advance sick leave; and

5. The employee is not subject to leave restriction.

Section 8—Privacy

The Agency will treat as confidential any medical information provided by an employee to any agent or representative of the Agency in support of a request for sick leave. The Agency may disclose such information subject to the Privacy Act of 1974 (552a) and 5 C.F.R. Part 339 only for purposes of making informed management decisions and only to individuals who have a valid need to know.

Section 9—Enforced Leave

The MSPB and the courts have determined that placing an employee on sick leave against his or her will is tantamount to a suspension. Therefore, the Agency will not place an employee on enforced sick leave without following the procedures contained in the Disciplinary and Adverse Actions Article of this CBA.

Article 16
Other Leave

Section 1—Family and Medical Leave Act

a. Administration: The Agency will administer leave requests made pursuant to the Family and Medical Leave Act of 1993 (FMLA) in accordance with 5 U.S.C. §§ 6381-6387 and 5 C.F.R. Part 630, subpart L.

b. Eligibility: To be eligible for coverage under the FMLA, an employee must have completed at least twelve (12) months of civilian service with the Federal government.

c. Entitlement: Eligible employees will be entitled to a total of twelve (12) administrative workweeks of unpaid leave (leave without pay) during any 12- month period. An employee may elect to substitute any accrued annual or sick leave for the covered period (consistent with existing sick leave regulations).

d. Grounds for Leave: An eligible employee may take FMLA leave for the following reasons:

1. birth of a son or daughter and care of newborn (within one (1) year after birth);

2. care of spouse, son, daughter, or parent with a serious health condition;

3. placement of a son or daughter with employee for adoption or foster care (within one (1) year after placement); or

4. serious health condition of employee that makes employee unable to perform duties of the employee's position.

e. Injured Military Member: A Federal employee who (1) is the spouse, son, daughter, parent, or next of kin (defined as the nearest blood relative) of a covered service member with a serious injury or illness and (2) provides care for such service member is entitled to up to 26 weeks of FMLA leave during a single 12-month period to care for the service member. However, the serious illness or injury must have been incurred by the covered service member in the line of duty while on active duty in the Armed Forces.

f. Continuation of Employment and Benefits: An employee who takes FMLA leave is entitled to be restored to the same position with equivalent benefits, pay status, and other terms and conditions of employment. The leave will not result in the loss of any employment benefit accrued before the leave began. If the employee uses leave without pay, he or she may elect to continue Federal Employee Health Benefits (FEHB) coverage and make arrangements to pay the employee contribution.

g. Requirements: Eligible employees will normally provide at least thirty (30) calendar days

notice of the need for FMLA leave, as practicable, by submitting an application (DOL Form WH-380) for FMLA leave to the Agency. The employee is required to provide medical documentation to process the application in accordance with FMLA regulations.

Section 2—Excused Absence (Administrative Leave)

a. Definition: An excused absence (frequently called "administrative leave") is an absence from duty administratively authorized by supervisors without loss of pay and without charge to leave.

b. Eligibility for Excused Absence: With the exception of emergency conditions, an employee must be in duty status at the beginning and/or end of a period of excused absence in order to receive benefit of the excused time. If operational requirements preclude an employee from receiving the full amount of excused absence authorized in this Section for a specific purpose, the remaining time is not available for future use by the employee.

c. Voting: If necessary, the employee will be authorized an amount of excused absence that will permit him or her to report for work up to three (3) hours after the polls open or leave work up to three (3) hours before the polls close, whichever requires the lesser amount of time off.

d. Donating Blood: Employees who donate blood to the Red Cross or other recognized Blood Banks will be excused from duty for a period of not more than four (4) hours, including travel, and any necessary recovery time following the donation.

e. Preventative Medical Program Participation: Employees may be excused from duty to attend Agency-sponsored preventive medical programs offering health education, physical examinations, or immunizations.

f. Workplace Closings: Whenever the workplace is closed or otherwise not operational, employees scheduled to work may be granted administrative leave for the duration of the closure. Employees who are telework ready and can perform their normally assigned duties may be required to perform those duties in a telework status. Employees scheduled for leave will normally remain in a leave status unless they cancel their leave and telework.

g. If a government-declared emergency condition prevents employees from arriving at work in a timely manner, even though the workplace is not closed, employees may be granted administrative leave for a part of the workday in accordance with the emergency declaration.

Section 3—Court Leave

a. Definition: Court leave is paid time off without charge to leave or loss of compensation

for service as a juror or for attending court in a nonofficial capacity as a witness on behalf of the United States or the District of Columbia. The court may be a state, federal, or District of Columbia court. For court leave purposes, municipal courts are considered state courts.

b. Administration: The Agency will provide employees with court leave, and employees will provide documentation to the Agency, in accordance with 5 U.S.C. §§ 5515, 5537, and 6322; and other applicable statutes, regulations, and policies.

c. Pay Status Requirement: The Agency will grant court leave only for days within the employee's regularly scheduled tour of duty when he or she otherwise would be in a duty or pay status.

d. Leave Period: The leave will start on the date on which the employee must report to the court, as identified in the summons, and will run until the date on which the court discharges the employee from service. It does not include:

1. time during which the employee is excused or discharged by the court for an indefinite period subject to recall by the court; or

2. time during which the employee is excused or discharged for one (1) or more days or for a substantial part of a day (more than five [5] hours).

e. An employee who is normally assigned to evening shift, night shift, or other work schedules and is required to appear in court, whether on jury duty or as a witness during the day will be granted an adjustment in his or her regular schedule in order to coincide with the court day(s), at his or her request. In the alternative, the employee may request court leave for the employee's regularly scheduled tour of duty, to allow for sufficient rest to perform his or her court duties. In such cases, the employee will not suffer any loss of pay and will continue to be entitled to night differential or other regularly scheduled premium payments in accordance with applicable payroll policies.

1. If an employee on court leave is excused from court with sufficient time to enable that employee to return to duty for at least two (2) hours of the scheduled workday, including travel time, the employee shall return to duty unless granted appropriate leave by the Agency. Employees will request and receive approval prior to going on leave to the extent practicable, using procedures as set forth above.

2. Employees may keep any court-provided expense money received for mileage, parking, or required overnight stay, to the extent consistent with law.

Section 4—Military Leave

a. Administration: The Agency will grant military leave to eligible employees in accordance with 5 U.S.C. § 5519, 5 U.S.C. § 6323, Public Law 106–554 (December 21, 2000),

Public Law 108–136 (November 24, 2003), and other applicable statutes, regulations and policies.

b. Eligibility: A full-time employee who is a reservist of the Armed Forces or a member of the National Guard is entitled to military leave for active duty or for training, in accordance with applicable statutes, regulations, and policies.

c. Pay Status Requirement: The Agency will grant military leave only for days within the employee's regularly scheduled tour of duty when he or she otherwise would be in a duty or pay status.

Section 5—Leave Without Pay

a. Definition: Leave Without Pay (LWOP) is a temporary non-pay status and absence from duty authorized by the Agency.

b. Entitlements: An employee is entitled to LWOP in the following circumstances:

1. Medical Treatment for Disabled Veterans: Disabled veterans are entitled to LWOP for medical treatment, examinations, and absences from duty in connection with their disability after presenting an official statement from a medical authority that such treatment is required. An employee must give prior notice of the period during which the employee's absence for treatment will occur.

2. Military Duty: Full time employees who are Military Reservists or National Guardsmen are entitled to LWOP for the time periods during which they are required to perform active duty or training if they have exhausted their military leave or are not entitled to military leave, in accordance with applicable laws and policy.

3. FMLA: Eligible employees are entitled to LWOP for certain family and medical needs covered by the FMLA.

4. Workers Compensation: Employees are entitled to LWOP for the period during which they are receiving worker's compensation payments from the U.S. Department of Labor.

c. LWOP to Serve in Certain Union Offices

1. The Agency will approve LWOP for one (1) employee per bargaining unit for a period of up to one (1) year in the event that the employee is elected or appointed to any Union office that requires full-time service.

2. Upon request, the Agency will grant a one (1) year extension of LWOP status for this purpose.

3. Employees on extended LWOP while serving as employee union representatives may arrange to make payment for retirement, Thrift Savings Plan (TSP), and health and life insurance benefits in accordance with applicable regulations.

d. Discretionary Grants of LWOP: The Agency may grant LWOP in other circumstances, but will not do so unless the leave will result in:

1. Better work performance;

2. Protection or improvement of the employee's health;

3. Retention of a desirable employee; or

4. Furtherance of a program of interest to the government (e.g., Peace Corps volunteers).

e. Substitution for Annual Leave: An employee at his or her option may substitute LWOP for annual leave in the following situations:

1. Officers and/or duly elected delegates of the Union for attendance at the Union's biennial convention;

2. For leave granted in conjunction with a death in the immediate family.

Section 6—LWOP or Compensatory Time for Religious Observances

a. Subject to the Agency's mission requirements, when an employee has personal religious beliefs that require absence from work, the Agency may grant annual leave, LWOP, or compensatory time off for such religious observances.

b. When the employee requests and the Agency grants compensatory time off for religious observance, in each instance the Agency will afford the employee the opportunity to earn such compensatory time-off hours.

c. An employee may work compensatory time-off for religious observances before or after taking such compensatory time-off on an hour-for-hour basis. A grant of advance compensatory time-off for religious observances will be repaid by the appropriate amount of compensatory time worked within six (6) pay periods or such time will be charged to annual leave.

d. Compensatory time worked to repay time-off for religious observance is not subject to premium pay provisions applicable to overtime hours.

Section 7—Leave for Bone Marrow and Organ Donation

a. Employees may use up to seven (7) days of paid leave each year, in addition to annual and sick leave, to serve as a bone marrow donor.

b. Employees may use up to thirty (30) days of paid leave each year, in addition to annual and sick leave, to serve as an organ donor.

Section 8—AWOL

a. Definition: AWOL is a temporary non-pay status and absence from duty not authorized by the Agency.

b. Administration: A supervisor may charge an employee with AWOL for a period during which the employee is absent from duty without supervisory approval, including for tardiness or for a period for which the Agency denied an employee's request for leave.

c. Pay Status: Employees charged with AWOL are placed in a non-pay status.

d. Disciplinary Status: Recording an employee's unauthorized absence or tardiness as AWOL is not a disciplinary action but it may serve as the basis for disciplinary action.

e. When a supervisor determines that an employee will be charged AWOL, the supervisor will notify the employee in writing as soon as possible. The notice will include the reason for charging AWOL and include the date and time period. AWOL will be changed to the appropriate leave status if it is later determined that the absence was excusable.

Article 17
Tardiness

Section 1—Employees' Responsibility

All employees are responsible for reporting to work promptly at the beginning of their assigned work shifts. Employees must make every reasonable effort to be at their assigned areas and ready for work at their specified start time. If an employee is not going to report at the beginning of his or her scheduled start time, he or she must notify his or her supervisor as soon as possible.

Section 2—Supervisors' Discretion

a. Immediate supervisors are responsible, for addressing the tardiness of the employees whom they supervise in a fair and equitable manner.

b. An employee's supervisor may excuse, without charge to annual leave, infrequent or unavoidable absence from duty of less than one (1) hour, including tardiness, if the absence is the result of circumstances beyond the control of the employee. If leave is charged, it will be in increments of fifteen (15) minutes. Unavoidable absence or tardiness of one (1) hour or more will be charged to annual leave, except as provided in Section c. below.

c. The supervisor may also handle tardiness in one of the following manners:

    1. The absence may be charged against any compensatory time to the employee's credit.

    2. The supervisor may approve the employee's request for the use of sick leave, if applicable, or leave without pay for the period of absence.

    3. In cases of chronic or excessive tardiness, the employee's supervisor may decline to excuse the tardiness and instead may charge the employee with AWOL.

Article 18
Student Loan Repayment Program

Section 1 – General

The Agency will administer the Student Loan Repayment Program pursuant to 5 U.S.C. § 5379 and 5 CFR § 537 and other applicable DOT rules and regulations as of the effective date of this Article. The Federal student loan repayment program permits agencies to repay federally insured student loans as a recruitment or retention incentive for candidates or current employees of the agency. A decision to offer a student loan repayment is an individual determination made on a case-by-case basis, based on organizational need or an employee's high or unique qualifications and budgetary limitations, without regard to political affiliation, race, color, religion, national origin, age, sex, disabilities, or genetic information. There is no entitlement to participate in the program. Repayment of student loans is at Management's discretion and subject to budgetary considerations of PHMSA.

Section 2 – Consideration

a. An employee must request in writing to the Director of Human Resources to be considered for the Student Loan Repayment Program through his or her supervisor and provide all necessary information to justify consideration.

b. The Agency will provide a response to the employee in a timely manner.

c. In accordance with 5 CFR 537.103(d), the Agency's selection process for employees to receive student loan repayment benefits will ensure fair and equitable treatment.

d. In accordance with 5 CFR 537.106(c), repayments of student loans are subject to maximum limits of $10,000 per calendar year and a total of $60,000 per employee.

e. Any employee receiving this benefit must sign a service agreement. The length of the service agreement will be as directed by applicable law, government-wide rule and regulation, or Agency policy.

Section 3 – Criteria

The Agency will follow the criteria for student loan repayments as set forth in 5 U.S.C. § 5379 and 5 CFR 537.105.

Section 4 – Reporting

a. The Agency shall provide the PHMSA Local 3313 Vice President with a copy of any report on the student loan repayment program which it provides to DOT within fifteen (15) calendar days after submission.

b. The parties agree to meet annually to discuss annual benchmarks and goals for the allocation of resources and to review the effectiveness of the program.

Section 5 – Applicability

Management reserves the right to determine the extent to which the program addresses recruitment versus retention. None of the provisions of this Article may be interpreted in a manner that is contrary to law or inconsistent with the requirement of an effective and efficient Government.

Article 19
Telework

Section 1—Introduction

a. The Parties acknowledge the value of a telework program in accomplishing PHMSA performance goals. Telework reduces congestion and mobile source emission; serves as a recruitment and retention tool; and improves work life quality. More importantly, telework is an effective and efficient means for continuing government operations when employees cannot travel to their duty locations.

b. This Article will be administered in accordance with DOT and PHMSA telework policies. Employee participation in the telework program is voluntary. Telework can be temporarily or permanently suspended or terminated by the participant, the supervisor or senior management in accordance with the provisions of this Article and the terms and conditions of applicable telework agreements.

c. The Agency will provide training to encourage the effective use of telework consistent with the Agency's mission. The goal will be to develop strategies that will assist supervisors and employees to eliminate barriers that limit the use of telework.

Section 2—Definitions

a. Official Duty Station (ODS) – the employee's official agency Worksite.

b. Alternate Duty Station (ADS) – a management-approved alternate work site that is geographically convenient to the employee's ODS. An employee's residence may be approved as an ADS.

c. Telework Agreement – a written agreement between the supervisor and the employee defining the employee's obligations and responsibilities under the Telework Program.

d. Portable Work – work normally performed at the employee's ODS that can be effectively performed at the ADS. This work is part of the employee's regular work assignment or approved special work assignment.

e. Non Portable-Work – assignments that are not portable include those assignments that necessitate face-to-face customer contact or the employee's physical presence at the ODS.

f. Government furnished equipment (GFE) – a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for job performance (includes laptop or desk top computer).

g. Intermittent telework – telework not regularly scheduled or routine as indicated in a telework agreement.

Section 3—General

a. Consistent with operational requirements, and upon an employee's request, the agency will be flexible in approving telework participation.

b. Eligible employees may be authorized to telework on a regular basis with the approval of their supervisors; employees must have sufficient portable work to support days requested to telework.

c. All employees are required to complete a written telework agreement, have it signed and approved by their supervisor, and complete mandatory telework training before being allowed to telework. Employees must comply with the terms and conditions of the telework agreement.

d. Telework should be seamless as if working in the office; employees should forward their office phones, and respond to phone calls and emails in a reasonable times.

e. Management reserves the right to direct an employee to report to the official duty location or cancel their scheduled telework day based on operational requirements.

1. Normally, the supervisor will notify the employee at least 24 hours in advance when requiring the employee to cancel his or her scheduled telework day.

2. The employee may be allowed to reschedule their cancelled telework day during the same pay period.

f. Employees are eligible to simultaneously have alternate work schedules and be on a telework agreement. Subject to the supervisor's approval consistent with organizational needs, there is nothing that prohibits an employee from being approved to telework the day before or after a regular day off.

g. An employee's request for a change to their telework agreements must be approved in advance by the supervisor prior to the date or pay period of the requested change.

h. Subject to supervisory discretion and approval, employees who are injured, recuperating or temporarily disable may be permitted to telework provided they are capable of completing their work assignments.

i. Employees are responsible for maintaining a proper working environment at the telework worksite. Managers and supervisors will not visit an ADS designated as an employee's residence other than for official business permitted by law or government-wide rule or regulation. Management shall provide notice at least twenty four (24) hours in advance of any such visit. Management will not inspect non-work spaces in the ADS (residence).

j. Employees are responsible for adjusting their transit benefits to appropriately account for

their telework schedule. Employees are not to receive transit benefits for the days they telework.

k. Employees are covered under the Federal Employee Compensation Act (FECA) if injured while performing official duties during telework. The employee must immediately notify his or her supervisor of any accident or injury that occurs while on duty at his or her approved telework worksite.

l. Teleworkers are in a duty status when teleworking and are expected to have the resources to perform their jobs and concentrate on official duties without interruption. Employees may not use duty time for any purpose other than performing Agency assigned work.

m. Management is responsible for supervising work in accordance with the Fair Labor Standards Act and the provisions of the CBA.

n. Teleworkers and non-teleworkers shall be treated the same for the purposes of:

1. Periodic Annual appraisals of job performance;

2. Training, rewarding, reassigning, promoting/reducing in grade, retaining and removing;

3. Work requirements;

4. Other acts involving managerial discretion.

o. Telework evaluation – The Labor Management Forum may take up telework topics including the evaluation of the effectiveness of the telework program, the marketing of the telework program and the goals and objectives for the telework program using Pre-Decisional Involvement (PDI).

Section 4—Eligibility

a. Position Eligibility Criteria Consistent with the DOT/PHMSA Telework Policies, position eligibility should be reviewed based on job function. The position and employee criteria described in this section shall apply when determining eligibility. Positions that have the following characteristics are eligible for teleworking:

1. Sufficient work activities that are portable and are not dependent on the employee being at the traditional worksite.

2. Work activities are conducive to remote supervisory oversight because of clear and measurable performance standards and results.

3. Adequate technology for offsite work is available. Materials and information necessary to perform the duties of the position can be readily moved to and from the

Federal office, consistent with data and systems security requirements, including Privacy Act protection requirements.

4. Necessary interaction with coworkers, subordinates, superiors, and customers can be maintained electronically or by telephone without adversely affecting coworkers, customer service or unit productivity.

5. Other position eligibility criteria that management determines to be appropriate, consistent with the Agency's goals and objectives for telework.

b. Positions generally not eligible for telework. Some position characteristics, tasks and duties generally are not suitable for telework. These include, but are not limited to the following:

1. Positions that require the employees to have daily, in-person contact with coworkers, supervisory officials, customers, Administration officials, Congressional officials, or the general public.

2. Positions in which operational requirements dictate employee physical presence at specific work locations; and/or

3. Positions that require routine access to classified information; unless required storage and equipment are readily available and the employee's servicing security organization has approved the telework arrangement in writing in advance.

c. Upon request, the Agency will identify all bargaining unit positions that are not eligible to participate in telework and provide the Union with justification for ineligibility.

d. Employee Eligibility Criteria. Upon approval of the supervisor, eligible employees, including probationary employees, may participate in telework on a voluntary basis. Employees may withdraw from the program at any time by notifying their immediate supervisor.

1. Supervisors and senior management are to assess individual performance characteristics and criteria when considering an employee for a telework arrangement. A supervisor may defer approving a telework agreement for a newly assigned employee to assess the employee's ability to work independently. To be eligible to telework, an employee must, at a minimum:

a. Have demonstrated performance of at least "Achieved Results";

b. Not be on a performance improvement plan;

c. Demonstrate dependability and the ability to work independently;

d. Be able to prioritize work effectively and utilize good time management skills;

e. Be in compliance with Federal government and Agency standards of conduct;

f. Not have been officially disciplined for violations of subpart G of the Standards of Ethical Conduct of Employees of the Executive Branch for reviewing, downloading, or exchanging pornography, including child pornography, on a Federal government computer or while performing official Federal government duties as provided in 5 U.S.C. 6502;

g. Not have been officially disciplined for being absent without leave (AWOL) or disciplined within the preceding 12 months for misconduct or performance issues action that has a nexus to telework;

h. Not be on leave restriction;

i. Not be excluded for participation by law, government wide rule or regulation; and

j. Have access and the ability to use the required teleworking equipment and services.

k. Not otherwise have interfered with the efficiency of the service.

Section 5—Categories

Eligible telework-ready employees may work under the following categories: Regular (1 or more days per pay period) or Intermittent. Supervisors shall be responsible for applying the eligibility criteria specified in the CBA to determine if the job characteristics of a particular position and the incumbent of that position are eligible to telework.

Section 6—ODS Shared Work Space

Employees who telework two (2) or fewer days per week will keep their workstation. Employees who telework more than two (2) days per week may be required to share space with other employees. Shared space will include necessary office automation equipment needed to perform the required duties of the position and access to a personal storage area.

Section 7—Telework Procedures

a. Work performed under a telework arrangement may be regular or intermittent.

b. Subject to paragraph c of this section, employees may request to participate in scheduled telework at any time.

c. Requests to Participate in Telework

1. Employees will request to participate in the telework program by submitting a telework agreement and a Self-Certification Safety Checklist Form.

2. The supervisor will act on requests within ten (10) working days of the request for scheduled telework. If the employee's request in denied, the supervisor will state his or her business related reasons for the denial by annotating it on the telework agreement. The employee may request a meeting with the supervisor to discuss a modification to the original telework request, e.g. as to the number of days per week requested.

3. If the request is approved, the supervisor and the employee shall work together to determine the appropriate telework schedule and finalize the telework agreement. The number of days for a regular telework schedule is subject to the availability of an appropriate amount of work that can be suitably performed at an ADS and ODS staffing requirement. In determining ODS staffing requirement, the supervisor shall consider the ability of employees on telework to participate in work activities in the same manner as employees present at the ODS.

d. The supervisor will meet with the employee to conduct an annual review of the telework agreement. After the review is completed, the supervisor and employee will re-sign and date the agreement and initial any changes. Employees will not have to submit future requests once the original request is approved unless a schedule change is requested by the employee.

e. Office closures – Employees who are "telework ready" and can perform assigned duties are required to telework during government/office closures as directed by the Agency, unless granted leave. An employee who is not "telework ready" will be granted administrative leave. If an employee is unable to telework during the government/office closure because of events outside of his or her control, the employee may be required by the supervisor to provide proof of the event in order to be granted administrative leave.

f. Early Dismissal/Late Opening – If there is an early dismissal or late opening at the ODS due to emergency circumstances, and the employee is working at their ADS, the employee is required to complete a full workday, unless the employee takes appropriate leave or is not telework ready.

g. An employee may be permitted to work overtime in a telework duty status in accordance with the overtime provisions of this CBA.

h. Requests for leave on scheduled telework days will be handled in accordance with this CBA.

Section 8—Work Assignments

a. Employees and supervisors will discuss and document, as necessary, the job tasks/assignments that will be carried out or completed while teleworking.

b. An employee teleworking will complete assigned work according to the work procedures agreed upon by the employee and supervisor and according to the job elements and performance standards established in the employee's performance plan.

Section 9—Restriction and Termination

a. Barring work performance or disciplinary actions which directly affect job performance, a supervisor's decision to terminate an employee's telework agreement will be based solely on operational work requirements.

b. Telework arrangements may be terminated by either management or the employee by written notification of the telework agreement, except under emergency situations. Reasons for termination of a telework agreement may include a decline in performance or productivity, or if the telework agreement no longer benefits the organization or the employee's needs.

c. The Agency may terminate an employee's telework agreement with documentation to support a decline in performance, productivity, or a pending disciplinary action which supports terminating telework.

d. Employees will suspend telework during travel, training, and other work assignments outside their normal work environment. Employees on detail may telework with the approval of the detail supervisor and if work requirement permits.

e. The Agency may temporarily restrict telework for a short period of time for a group or an individual in order to meet operational requirements. Barring an urgent operational requirement, the employees will be provided notice at leave five (5) days in advance.

f. The employee's telework agreement may be terminated if he or she does not meet one of more of the eligibility criteria or the terms of the telework agreement.

g. Management will counsel employees about specific problems, including a diminishment in performance, before removing an employee from the telework program, except in the case of egregious violations.

h. When an employee's participation in the telework program is terminated, the employee will be notified in writing of the reason for termination and the effective date of the termination. Management will consider individual circumstances when considering the effective date of removal from the program.

Section 10—Equipment and Supplies

a. Based on funds, equipment availability, and operational requirements, GFE, including computers and other telecommunications equipment may be provided by the Agency for use by employees participating in the teleworking program. GFE is to be used only in

accordance with PHMSA policies governing use of government equipment.

b. The Agency is responsible for the maintenance, repair, and replacement of GFE. Employees are responsible for bringing the equipment to the ODS or maintenance and inventory control.

c. Employees are responsible for repair and maintenance of personally owned equipment and associated cost for telecommunications and internet services.

d. Approved supplies normally will be procured through established office procedures.

e. GFE will be signed out and returned in accordance with PHMSA policies and procedures. The employee must return all GFE and material to the ODS at the conclusion of the telework arrangements or upon request.

f. As appropriate, the Agency shall provide GFE in support of a requested and approved reasonable accommodation.

Section 11—Computer and Information Security

a. Employees who telework are to follow all required security protections and DOT policies to include DOT Departmental Personnel Manual, Chapter 650 as they pertain to the protection of information, equipment, information system resources, classified information, computer security, and the Privacy Act of 1974, 5 U.S.C. 552a.

b. Employees who access DOT systems as a part of their telework agreement must sign the Rules of Behavior Agreement.

Article 20
Alternate Duty Locations

Section 1—Policy

a. An alternate duty location is defined as a permanent duty station geographically remote from the organizational unit to which the employee is assigned. This location may include agency offices, employees' private residences, and co-located sites with other federal, state, or local government facilities, as approved by the Agency.

b. The establishment of alternate duty locations is a management decision. Assignments to alternate duty locations should be done in a fair and reasonable manner and promote the efficiency of the organization.

c. Nothing shall affect management's right to determine the structure or organization of the Agency and nothing shall preclude the Union from negotiating appropriate arrangements affected by the exercise of such management rights.

Section 2—Criteria

a. An employee must enter into an agreement with his or her supervisor outlining rules and performance expectations to work from an alternate duty location.

b. Employee duties and responsibilities must be able to be carried out seamlessly from the alternate duty location.

c. The position is suitable for remote supervision.

d. Funding to support an employee's relocation costs or the cost of operating from an alternate duty location is subject to budgetary constraints. No government funds will be provided for voluntary reassignment to alternate duty locations.

e. An employee may be recalled to their organizational unit location due to budgetary constraints, poor performance, discipline, technology restrictions, or other legitimate reasons.

Section 3—Approval

Requests for alternate duty locations will be considered on a case by case basis for the benefit of the Agency and may be approved on a permanent or temporary basis. The Associate Administrator is the approving authority for an employee's request for an alternate duty location.

Article 21
Disciplinary/Adverse Action

Section 1—Policy

a. Disciplinary actions are written reprimands and suspensions of fourteen (14) calendar days or less. Adverse actions are suspensions of more than fourteen (14) calendar days, reductions-in-grade, reductions-in-pay, reductions in force, or removals. Adverse actions will be taken in accordance with 5 U.S.C. Chapter 75. Bargaining unit employees will be subject to disciplinary or adverse action only for such cause that promotes the efficiency of the service.

b. The primary objective of discipline is to correct and improve employee behavior. Discipline should be preceded by counseling or oral warnings. Counseling and oral warnings are informal in nature. Memoranda of warning (including written admonishments) and letters of counseling are not disciplinary actions under this Article but are used to correct employee performance, conduct, or behavior.

c. Discipline, memoranda of warning, admonishments, and negative counseling will not be conducted publicly or in such a manner as to embarrass the employee.

d. The concept of progressive discipline, which encourages supervisors to use the lowest level of discipline necessary to correct a problem, is designed to correct and improve employee performance, conduct, or behavior, and will guide supervisors in making disciplinary decisions. A common pattern of progressive discipline is written reprimand, short term suspensions of fourteen (14) calendar days or less, and adverse actions. Progressive discipline requires the Agency to consider the relevance and freshness of previous offenses.

e. Any of the steps in the progressive discipline process may be bypassed when the severe nature of the behavior makes a lesser form of discipline inappropriate.

f. Disciplinary and adverse actions will be consistently applied. The Agency will administer disciplinary and adverse action procedures and determine appropriate penalties to all employees in a fair and equitable manner.

g. If the Agency believes that disciplinary or adverse action is necessary, such action will be initiated within a reasonable period of time after an investigation. If the Agency does not take an action within a reasonable amount of time after an investigation is concluded, the employee and or the union may request that the Agency expunge from its system of records all negative materials which were accumulated by the Agency for the matter in question. If the Agency denies the request, it shall provide the reasoning for the denial consistent with law, government wide regulation, or for the efficiency of the service.

h. The deciding official in suspensions and adverse actions will always be different from the

official who proposed the action. Normally, the deciding official will be at an equivalent or higher level than the proposing official.

i. Employees and their representatives are entitled to copies of all of the material relied upon by the Agency in proposing any disciplinary action.

j. The termination of a probationary employee is not governed by this Article.

Section 2—Reprimands

a. A reprimand is the lowest level of discipline and is issued to an employee for misconduct. An official reprimand is a written disciplinary action that specifies the reasons for the action and does not require prior notice to the employee. If a discussion is held with the employee when a reprimand is to be given, the employee may request Union representation prior to the start of the discussion. The official written reprimand will specify that; 1) the employee may be subject to more severe disciplinary action upon any further offense, 2) that he or she has the right to file a grievance under the negotiated grievance procedure, 3) that he or she has the right to Union representation during all aspects of the grievance procedure, 4) the date by which a grievance must be filed, and 5) the name, telephone number, and email address of the management official to whom a grievance should be filed.

b. An official letter of reprimand and its related documents may not remain in an employee's electronic official personnel folder (e-OPF) for more than 2 years from the date of the reprimand.

Section 3—Procedures for Disciplinary/Adverse Actions

When a supervisor proposes to suspend, demote, or remove an employee, the following procedures will apply:

a. For proposed suspensions of fourteen (14) calendar days or less:

1. The employee will receive notice at least twenty-one (21) calendar days prior to the effective date of the proposed disciplinary action and will have fourteen (14) calendar days to answer the charges and specifications, orally and/or in writing. The employee may submit affidavits and/or other documentary evidence in support of the employee's reply. The Agency may provide the employee with an extension of time in which to reply, if requested by the employee in writing, setting forth the reason for the request. Generally, the Agency will not grant an extension for the reply that would have the effect of extending the notice period beyond thirty (30) calendar days.

2. The employee will be given a reasonable amount of duty time to prepare and present an oral and/or written response to the proposal.

3. In the event that the employee cannot report to work, the charges and specifications may be furnished to him or her by any mail service that utilizes a tracking system.

b. For proposed suspensions of fifteen (15) calendar days or more and removals:

1. The Agency will give employees written notice at least thirty (30) calendar days prior to the effective date of any proposed adverse action and the employee will have fifteen (15) calendar days to answer the charges and specifications, orally and/or in writing, subject to the exceptions set forth in 5 C.F.R. § 752.404(d). The employee may submit affidavits and/or other documentary evidence in support of the employee's reply. The Agency may provide an extension of time in which the employee may reply, if requested by the employee in writing, setting forth the reason for the request. Generally, the Agency will not grant an extension for the reply that would have the effect of extending the notice period beyond 30 calendar days.

2. The employee will be given a reasonable amount of duty time to prepare and present an oral and/or written response to the proposal.

3. In the event that the employee cannot report to work, the charges and specifications may be furnished to him or her by any mail service that utilizes a tracking system.

Section 4—Off-Duty Misconduct

In cases where a disciplinary or adverse action is issued or proposed for reasons of off- duty misconduct, the Agency's written notification will contain a statement of the nexus between the off-duty misconduct and the efficiency of the service.

Section 5—Agency Decision

a. In arriving at a determination of whether the charge(s) and specification(s) are sustained for any proposed disciplinary or adverse action, the Agency shall consider only the evidence provided with and within the notice of proposed action and any response and evidence provided by the employee and/or his or her representative. The decision will explain how it any factual disputes that were raised or developed were resolved. Should a charge be sustained the deciding official will consider a list of mitigating and/or aggravating factors commonly known as the *Douglas Factors* in deciding an appropriate level of discipline. The decision will specify how each applicable factor was treated in arriving at the appropriate level of discipline. If the imposed level of discipline is less severe than what was proposed, the decision will also specify why the action was mitigated.

b. If the decision is to sustain a proposed action, it will specify the reasons, the effective date, the action to be taken, and the employee's appeal and/or grievance rights regarding

the decision. A second copy of the letter and any attachments will be provided to the employee's representative.

c. Final decisions on adverse actions may be appealed to the MSPB or grieved in accordance with the grievance procedures of this CBA, but not both.

Section 6—Employee Rights

The employee will have the right to:

a. Be represented by a representative designated by the Local Union or another representative as authorized by law. Verbal designations will be confirmed in writing.

b. Raise any defense to the deciding official allowed by applicable laws and regulations.

c. Request, at any time, that their supervisor consider removing any memoranda of caution or warning, admonishment, negative counseling, disciplinary action, or adverse action from the Agency's system of records maintained on the employee. Any justification for maintaining these records longer than two (2) years from the date of issuance must demonstrate that it is consistent with law or government-wide regulation or that it promotes the efficiency of the service.

Section 7—Allegations of Discrimination

If an employee alleges that a disciplinary/adverse action is based, in whole or in part, on discrimination, the employee may file an EEO complaint and/or MSPB appeal as permitted by applicable law and regulations or (under the Union's sole authority)
proceed to arbitration under this CBA, but not both.

Section 8—Investigations

a. If an employee is interviewed regarding potential misconduct, the following information will be provided:

1. The general subject of the interview or allegation;

2. That he or she is the subject of the investigations; or

3. Whether he or she is being interviewed as a witness.

Note: Weingarten Rights provide for a Union representative to be present at any Agency representative's examination of a unit employee if "the employee reasonably believes that the examination may result in disciplinary action" and "the employee requests representation."

b. When bargaining unit employees are interviewed as witnesses in a matter being

grieved/arbitrated or charged as an unfair labor practice, the Agency will notify the union in writing and afford it the opportunity to be present.

c. Under Brookhaven, when management interviews a unit member who is a potential witness in a ULP or Arbitration hearing, the employee must be assured by management that no reprisal (discipline) will be taken if the employee declines to be interviewed. Employees who decline to be interviewed must not be coerced otherwise.

d. If the matter being investigated concerns potential criminal misconduct, the following warnings will be provided to employees, as appropriate:

1. Miranda: Given when an individual is being interrogated concerning his or her own potentially criminal misconduct and is taken into custody or deprived of freedom in a significant way. This warning advises that the individual, among other things, is entitled to remain silent or otherwise not incriminate himself or herself and to the assistance of an attorney.

2. Garrity: Informs federal employees who are subjects of investigations, that although they would normally be expected to answer questions regarding their official duties, refusal to answer on the ground that the answers may tend to incriminate them will not subject them to disciplinary action.

3. Kalkines: Advises that the possibility of criminal prosecution has been removed, usually by a declination to prosecute by the Department of Justice, and that the employee is required to answer questions relating to the performance of his or her official duties or be subject to disciplinary action.

Article 22
Grievance Procedures

Section 1—Purpose

This Article is to ensure that the Union and the Agency settle grievances in an orderly, prompt, and equitable manner so that the efficiency of the Agency may be maintained and the morale of employees is not impaired. Every effort will be made to settle grievances at the lowest possible level of the grievance procedure. Employees and their representatives will be unimpeded and free from restraint, interference, coercion, discrimination, or reprisal in seeking resolution of grievances. This Article will be administered in accordance with this CBA, 5 U.S.C. Chapter 71, and other governing laws.

NOTE: Alternative Dispute Resolution (ADR) processes, including mediation, may be used at any stage in a grievance upon mutual agreement of the Parties. If ADR/mediation is used, the grievance time limits are suspended until the conclusion of the ADR process.

Section 2—Definitions

Grievance means any complaint:

a. By any employee concerning any matter relating to the employment of the employee;

b. By the Union or the Agency concerning any matter relating to the employment of any employee; or

c. By any employee, the Union, or the Agency concerning:

   1. The effect, the interpretation, or a claim of breach regarding a collective bargaining agreement; or

   2. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

Section 3—General

a. A grievance will be filed in writing and will contain the following:

   1. Name(s) of the grievant(s);

   2. Date the grievance is submitted;

3. A statement of the circumstances giving rise to the grievance, including the date the alleged grievance arose and the responsible management official(s) alleged to be involved;

4. The specific article and section of this CBA alleged to have been violated, and/or the law, rule, policy, or regulation claimed to have been violated or the specific condition of employment in contention;

5. Relief requested;

6. Whether they will be self-represented or represented by the Union; and

7. The name and contact information of the Union representative, if any.

b. The procedures set forth in this Article, except as provided in Section 5 below, will be the exclusive procedure available to employees and to the Parties for the resolution of grievances.

c. Bargaining unit employees have the right to be represented by a Union representative in the processing of any grievance filed under the provisions of this Article and to be accompanied by a Union representative at any meeting that the employee may attend during the processing of the grievance.

d. Bargaining unit employees also have the right to file and process a grievance under these procedures without Union representation. If the grievance of an employee is resolved, the resolution cannot be inconsistent with the terms and provisions of this CBA. The Union has the right to be present and participate during any meeting held between representatives of the Agency and bargaining unit employees to discuss any grievance. The Union will be provided copies of all documentation generated by any grievance.

e. In the event either Party should declare a grievance non-grievable or non- arbitrable, the original grievance shall be considered amended to include this issue. The Parties agree to raise any questions of grievability or arbitrability of a grievance prior to the opening of an arbitration hearing on the merits. All disputes of grievability/arbitrability shall be presented jointly with the merits issue(s) in the related grievance, except where the Parties agree to hear the grievability/arbitrability issue and the merits issue separately.

f. For all grievances that are denied, the Agency's decision letter will identify the next step grievance official.

Section 4—Exclusions

The following are specifically excluded from coverage of this Article:

a. Any claimed violation of Subchapter III of 5 U.S.C. Chapter 73 relating to prohibited political activities;

b. Retirement, life insurance, or health insurance;

c. A suspension or removal under 5 U.S.C. § 7532 relating to national security;

d. Any examination, certification, or appointment; or

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

f. Termination of a probationary or trial period employee;

g. A notice of proposed disciplinary, adverse, or performance based action (however, the subsequent decision may be grieved);

h. The granting of or failure to grant or the amount of an award;

i. Non-selection from a group of properly ranked and certified candidates;

j. The content of published Agency policy or regulation;

k. Oral or written counseling;

l. An action which terminates a detail or temporary or term promotion;

m. Supervisory determination of job elements and performance standards; or

n. A return of an employee from an initial appointment as a supervisor or manager to a non-supervisory or non-managerial position for failure to satisfactorily complete the probationary period under 5 U.S.C. 3321 (a)(2) or 5 CFR Part 315, Subpart I.

However, the improper application of procedure and failure to follow process shall be grievable for items h through n above.

Section 5—Election of Procedures

a. In accordance with 5 U.S.C. § 7121, an employee may raise matters covered under 5 U.S.C. § 4303 (unacceptable performance) and 5 U.S.C. § 7512 (suspensions of more than fourteen (14) days, removals, furloughs without pay for 30 days or less, or reductions in pay or grade) under either the appellate procedures of 5 U.S.C. § 7701 or

the arbitration procedure in this CBA, but not both. An employee will be deemed to have exercised the employee's option to raise a matter under either the applicable appellate procedure or the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedure or files a grievance in writing in accordance with this Article, whichever event occurs first.

b. An employee affected by a prohibited personnel practice or discrimination may raise the matter under a statutory procedure or the negotiated grievance procedure, but not both. An employee will be deemed to have exercised the employee's option at such time as the employee timely files a grievance in writing or initiates an action under the applicable procedure, whichever event occurs first.

c. Before filing a grievance that alleges discrimination, the employee may first discuss the allegation with an EEO counselor. This discussion must be within 45 calendar days after the event causing the allegation or after the date the employee should have reasonably become aware of the event. The counselor shall have 30 calendar days to resolve the matter informally. However, if the employee and the agency agree to mediation, an additional 60 calendar days will be available to attempt resolution. If the employee elects to file a grievance on a matter of alleged employment discrimination under the negotiated procedure, he or she shall proceed under Section 8c of this Article within fifteen (15) calendar days of receiving a notice of the employee's right to file a discrimination complaint from the EEO counselor. The grievance will allege only the discriminatory bases raised during the informal EEO counseling and shall include a copy of the right to file notification as well as the EEO counseling intake form.

Section 6—Exclusivity

a. Grievances covered by this CBA may be initiated by employee(s) and/or their Union representative or by the Agency. Representation of bargaining unit employees shall be the sole and exclusive authority of the Union.

b. Except as provided by law, this is the exclusive procedure available to bargaining unit employees, the Union, or the Agency for the resolution of grievances within its scope.

Section 7—Representation

a. Anyone whom the Union has designated, whether verbally or in writing, for a particular issue is the representative of the Union for that issue; otherwise, the Local Union President is to be considered as the exclusive representative. Verbal designations will be confirmed in writing.

b. The Union has the right to be present during any proceeding under the negotiated grievance procedure. If the Union is not the designated representative, a copy of the grievance will be provided to the Union within seven (7) calendar days of the filing date. The Agency will provide the Union reasonable advance notice of any grievance meeting/discussion when the Union is not the designated representative. A copy of each grievance decision will be timely provided to the Union.

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

d. In situations where the grievant(s) and representative are on different work schedules and/or locations, the Parties will make every reasonable effort to schedule all steps in the grievance process to be held within the common work times of the grievant and representative unless the Parties mutually agree otherwise; this may include making adjustments to either the grievant's or the representative's work schedule.

Section 8—Procedures

a. Union Grievance:

1. Union institutional grievances (grievances not filed on behalf of any particular employee or set of employee(s)) must be filed with the Human Resources Division, or designated Agency representative, within fifteen (15) calendar days of the date of the action being grieved or the date the Union first learned of its occurrence.

2. A meeting may be held by mutual agreement within fifteen (15) calendar days of filing a grievance.

3. A response to the Union's grievance will be provided in writing within fifteen (15) calendar days of the meeting, if one is held, or within fifteen (15) calendar days of the filing of the grievance, if no meeting occurs.

4. If the Union is dissatisfied with the Agency's decision, it may request arbitration in accordance with the Arbitration Article of this CBA.

b. Agency Grievance:

1. Agency grievances will be filed directly with the Local's PHMSA Vice-President within fifteen (15) calendar days of the date of the action being grieved or the date the Agency first learned of its occurrence.

2. A meeting may be held by mutual agreement within fifteen (15) calendar days of filing the grievance.

3. Responses to Agency grievances will be provided in writing within fifteen (15) calendar days of the meeting, if one is held, or within fifteen (15) calendar days of filing the grievance, if no meeting occurs.

4. If the Agency is dissatisfied with the Union's decision, it may request arbitration in accordance with the Arbitration Article of this CBA.

c. Employee Grievance: The Parties agree that it is preferable for workplace issues to be resolved informally at the lowest organizational level possible. Therefore, the Parties

encourage employees to seek informal resolution of concerns with their first level supervisor prior to filing a grievance under this procedure.

Step 1: An employee or the employee's Union-designated representative must file a grievance with the employee's immediate supervisor within fifteen (15) calendar days of the date of the action being grieved or the date the employee first learned of its occurrence. However, if the grievance concerns an action of the immediate supervisor (unless the immediate supervisor is an Associate Administrator or equivalent level) the employee may file the Step 1 grievance with the employee's second level supervisor.

The Grievance Official shall convene an informal meeting prior to replying to the grievance, and will respond in writing to the employee within fifteen (15) calendar days after the date of the meeting or, if the meeting is not held by mutual consent, within fifteen (15) calendar days after receipt of the grievance.

NOTE: If the employee's first-level supervisor is an Associate Administrator or equivalent level, a Step 2 grievance may be filed with an appropriate management official at an equivalent level. If the Step 2 grievance is unresolved, the Step 3 grievance is waived and the Union may invoke Arbitration.

Step 2: If the grievance is unresolved at Step 1, the employee or his or her Union-designated representative may file a written Step 2 grievance with the designated next level supervisor within fifteen (15) calendar days after the Step 1 Grievance Official's response is due or received. The Step 2 Grievance Official will respond in writing to the employee within fifteen (15) calendar days after receipt of the grievance.

NOTE: If the employee's second-level supervisor is an Associate Administrator or equivalent position, a Step 3 grievance may be filed with an appropriate management official at an equivalent level.

Step 3: If the grievance is unresolved at Step 2, the employee, or the Union- designated representative may file a written Step 3 grievance with the applicable Associate Administrator, or designee, within fifteen (15) calendar days after the response from Step 2 is due or received, whichever occurs first. The Associate Administrator, or designee, must provide a written reply to the Union within fifteen (15) calendar days after receipt of the grievance.

NOTE: If the matter is not resolved by the third step, the matter is subject to arbitration in accordance with Article 23 of this CBA.

d. Final decisions on disciplinary and adverse actions:

Grievances challenging final decisions on disciplinary and adverse actions will be filed at Step 3 of this procedure unless the final decision was issued by an Associate Administrator or equivalent position, or higher, in which case the matter may proceed directly to arbitration in accordance with the Arbitration Article.

Section 9—Failure to Pursue Grievances

Failure on the part of an aggrieved employee or the Union to timely prosecute the grievance at any step of this Article will have the effect of nullifying the grievance. Grievances that fail to comply with the provisions of Section 3.b of this Article will be returned to the grievant for the required information. The applicable time limits will be suspended until the required information is received.

If the Agency does not issue a decision within the time limits set forth in any step of the Grievance procedure, it will be considered a denial of the grievance and permit the aggrieved employee or the Union to move to the next step of the grievance procedure.

Section 10—Grievance Decisions

All grievance decisions will be in writing and state the issue being grieved, a summary of the findings, and the rationale for the decision. The Agency will provide copies of relevant documents cited in the decision to the employee and the Union.

Section 11—Withdrawal

The Union, acting as the responsible representative of all employees in the bargaining unit, may, at any step of the grievance procedure, on a nondiscriminatory basis, withdraw from any grievance.

Section 12—Appeal of Adverse Decisions/Arbitration

Unfavorable decisions issued at the final step of a grievance process for employees and the Union may be submitted to arbitration only by the Union. Unfavorable decisions issued by the Union for Agency Grievances may be submitted to arbitration only by the Agency.

Article 23
Arbitration

Section 1—Purpose

This Article shall be administered in accordance with the Federal Service Labor Management Relations Statute, Title 5, U.S.C. Chapter 71, and this CBA. This Article establishes the procedures for the arbitration of disputes between the Union and Agency that are not satisfactorily resolved by the negotiated grievance procedure article of this CBA. A referral to arbitration can be made only by the Union or the Agency.

Section 2—Preliminary Procedures

a. The Union or the Agency may invoke arbitration by serving written notice on the other Party within thirty (30) calendar days following receipt of a final decision under the Negotiated Grievance Procedure. The notice shall identify the grievance and shall be signed and dated by an authorized representative on behalf of the Party submitting the matter to arbitration

b. Within ten (10) calendar days after invoking arbitration, the Parties to the arbitration shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS) by jointly submitting a completed FMCS Form R-43, "Request for Arbitration Panel." If one Party refuses to join in the request for arbitrators, the other Party may make a unilateral request to FMCS for a list of arbitrators. A copy of the request to FMCS will be served on the other Party.

c. Within ten (10) calendar days from receiving the list of arbitrators from the FMCS, the Parties shall meet to select an arbitrator. The Parties shall each strike one (1) name from the list alternately and then repeat the procedure until only one (1) name remains. The person whose name remains shall be selected as the arbitrator. The Party striking the first name shall be chosen by a coin toss.

d. In the event either Party refuses to participate in the selection of an arbitrator, or upon inaction or undue delay, the moving Party shall be empowered to make a unilateral selection of an arbitrator to hear the case.

e. Upon selection of the arbitrator, the Parties shall jointly communicate with the arbitrator and one another to select an agreeable date for the submission of motions and responses dealing with questions of arbitrability, if any, and establish a date for the hearing. Hearings over employee grievances shall take place at the site where the employee works, unless otherwise mutually agreed. Absent cooperation from both Parties, either Party may move the arbitration process forward.

f. Parties may present closing statements orally at the conclusion of the hearing.

g. The Parties may use stipulations of fact and expected testimony for uncontroverted evidence.

Section 3—Grievability/Arbitrability

a. The arbitrator has the authority to make all grievability and/or arbitrability determinations. If either Party raises an issue of grievability/arbitrability, the arbitrator will hear the merits of the underlying grievance and decide both issues together.

b. Arbitrability/grievability issues must be raised prior to the opening of an arbitration hearing on the merits.

c. Upon mutual agreement of the Parties, issues arising under this section may be submitted to the arbitrator by brief, and decided prior to a hearing on the merits of the underlying grievance.

d. Any allegations of grievability/arbitrability will be heard as threshold issues in the hearing. There will be no separate hearing for grievability/arbitrability issues, except by mutual consent.

Section 4—Witnesses and Parties

a. The grievant(s), the grievant's representative, and technical advisor, if any, and all employees identified as witnesses, shall be on duty and granted duty time and travel and per diem expenses to the extent necessary to participate in all phases of the arbitration proceeding, either as a Party or to testify as a witness, without loss of pay.

b. The Agency shall ensure that all witnesses who are employed by the Agency are available for the hearing. In those instances when a witness cannot be made available on the day required, the arbitration may be postponed.

Section 5—Authority of Arbitrator

The arbitrator's decisions shall be final and binding, subject to the Parties' right to file exceptions to an award in accordance with law. However, the arbitrator shall be bound by the terms of this CBA and shall have no authority to add to, subtract from, alter, amend, or modify any provision of this CBA. The arbitrator may retain jurisdiction over a case when necessary to clarify the award, and will retain jurisdiction in all cases where exceptions are taken to an award and the Federal Labor Relations Authority sets aside all or a portion of the award.

Section 6—Ex Parte Communication with Arbitrator

There will be no communication with the arbitrator unless both Parties are participating in the communication.

Section 7—Computation of Time

In computing periods of time for the purpose of this Article, the first day of counting will be the day after the day of the act or event (e.g., the day after the employee received a final decision to take discipline, or the day after the deadline for submitting a response to a grievance). If the last day in the count is a day in which an unscheduled leave policy is in effect, that day shall not be counted, and the last day will be the next regular work day.

Section 8—Arbitrator's Award

The arbitrator shall render a written decision not later than 30 calendar days after the conclusion of the hearing unless the Parties mutually agree to extend this time limit. If no exception or other appropriate legal action is filed within the time limit established by statute and/or FLRA regulation, the award is final and binding. The appropriate Party will immediately take the actions required by the final award within 30 calendar days after it becomes final and binding, except as provided by the Award.

Section 9—Costs of Arbitration

a. The Parties agree to share equally the cost of arbitration, including but not limited to reasonable expenses of the arbitrator.

b. The cost of a reporter or transcript, if used, shall be shared equally by the Parties if it is mutually agreed by the Parties to have one, or where requested by the arbitrator. Absent mutual agreement, either Party may unilaterally request that a transcript be prepared but must bear all costs incurred in its preparation.

c. If, prior to the arbitration hearing, the Parties resolve the grievance, any cancellation fees shall be borne equally by both Parties. If a Party requests postponement, that Party shall bear the full cost of any rescheduling fees or postponement fees.

Section 10—Attorney Fees and Expenses

a. In accordance with the Back Pay Act, an arbitrator, notwithstanding the *functus officio* doctrine, has jurisdiction to resolve a motion for attorney fees from the Union after an award becomes final and binding.

b. The Agency is responsible for reasonable attorney fees and expenses as awarded by Arbitrators consistent with the Back Pay Act or case precedent.

c. The arbitrator's award on the issue of attorney fees will be issued within thirty (30) days

of the arbitrator's receipt of the Agency's response to the Union's request. The arbitrator will provide a detailed explanation of why fees were or were not granted, as well as the hours and rates allowed.

d. All charges of the arbitrator incurred in connection with the award of attorney fees will be shared equally by the Parties.

Article 24
Personnel Records

Section 1—Official Personnel Files

a. The official files of all personnel, including employee performance documentation, will be managed by the Human Resources Division. PHMSA will maintain employees' Electronic Official Personnel Folders (e-OPFs) in accordance 5 C.F.R. Part 293 and other applicable OPM laws and regulations.

b. Employees have the right to examine the contents of their personnel files, at any time, by accessing electronically their e-OPF.

Section 2—Supervisory Notes

a. Supervisors may retain employee notes. These notes are considered to be mere extensions of a supervisor's memory and are not Agency records subject to the record keeping or other requirements of applicable laws and regulations, including the Privacy Act. Notes may be retained or discarded, at the discretion of the supervisor. Supervisors must maintain such notes in a secure manner and not disclose them to anyone without a need to know.

b. Employees may request in writing a copy of specific documents, records, files, or notes that reflect negatively on the employee and the supervisor will provide the documents within a reasonable amount of time. Any grievance time limits, if applicable, shall be suspended for the same amount of time it takes for the document(s) to be provided to the employee.

c. Supervisor notes shall not be used to circumvent timely disclosure to an employee, nor may they be used to retain information that should properly be contained in a system of records.

d. If a supervisor uses any information contained in his or her personal notes/memory joggers as part of an official record that information will be maintained in accordance with the Privacy Act, and the employee is entitled to be notified of the intent to use that information and provided a copy upon request.

e. The maintenance of a supervisor's notes will not preclude the supervisor from addressing any conduct or performance issues in a timely manner.

f. Personnel records/files/notes that do not have legal or regulatory requirements to be maintained beyond their expiration date shall be considered expunged from the record.

Article 25
Performance Management

Section 1—Overview

a. The purpose of the performance management system is to provide a framework for open, two-way communications between employees and their rating officials. Those communications should strive for clarity and an honest engagement of feedback and ideas for improvement.

b. The Agency and the Union are committed to providing quality public service. Accomplishment of the Agency mission should be achieved in an environment that recognizes the value of its employees and the importance of teamwork.

c. Performance of Agency objectives is a function of systems implemented and administered by management, and individual performance by motivated, trained, and valued individual employees.

d. At a minimum the performance management system will emphasize employee development and their contribution to the Unit and group achievement of the Agency's mission/objective(s). Performance feedback should identify the supervisor's role as leader and employee coach.

e. The performance management system will not be used as a disciplinary tool; foster individual competition; based on numerical goals and/or numerical performance levels not contained in the employee's own performance standards; or on expectations or requirements that are unattainable by most employees working under normal conditions.

f. The Agency will not prescribe a distribution of levels of ratings for employees covered by this CBA. Each employee's performance will be judged solely against his or her performance standards.

Section 2—Policy

a. The provisions of this Article apply to all bargaining unit employees in the competitive and excepted service.

b. The employee performance management system and its application will be fair, equitable, reasonable and related to the employee's position description and related duties assigned.

c. Duties not assigned will not factor into an employee's rating, regardless of whether or not they appear in a performance plan or a position description.

d. Performance plans will designate with clarity, to the maximum extent feasible, (a) tasks assigned and (b) the standards to which it is possible the employee can complete those assignments.

Section 3—Definitions

Terms used in this Article that relate to the Performance Management System, such as "appraisal," "critical element," or "performance rating" will, to the extent applicable, have the same meaning as in government-wide regulation.

Section 4—Critical Elements

a. Critical elements are those work assignments or responsibilities of such importance that unacceptable performance on an element would result in a determination that the employee's overall performance was unacceptable.

b. To the maximum extent feasible, the critical elements will be consistent for like positions. Variations from these critical elements will be based on significant differences in the job.

Section 5—Performance Standards

a. To the maximum extent feasible, performance standards must be based on objective, reasonable, and measurable criteria, and provide a clear means of assessing whether objectives have been met.

b. To the maximum extent feasible, the performance standards will be consistent for like positions. Variations from these performance standards will be based on significant differences in the job.

c. Application of all performance standards shall be fair and equitable, and consistent with regulatory requirements.

d. In the application of like performance standards, variances in working conditions among employees shall be taken into consideration.

Section 6—Communications

a. Within the first sixty (60) calendar days of every rating period, or within sixty (60) calendar days of employment or reassignment, the rating official will discuss the performance plan with each employee (whenever possible these discussions will be face-to-face). The rating official will present to the employee a proposed performance plan, which contains the critical elements, and any other performance elements, as well as the performance standards for each of these elements.

b. The employee will be given seven (7) calendar days to review the proposed plan and submit any recommended changes, as well as justification for the recommendations; within seven (7) calendar days thereafter, the rating official will note agreement or disagreement with any recommended changes and ask the employee to sign the performance plan and give the employee a copy of the final performance plan. The rating official will explain the reasons why any of the employee's recommendations were not adopted. The employee's signature on the performance plan is to acknowledge receipt and does not necessarily indicate agreement with the plan, but proof of delivery sets the plan in place.

c. Subsequent discussions between the employee and rating official will be held and critical elements or performance standards may be changed when there is a change in agency mission goals or work situations. The performance plan should reflect actual work assignments to the maximum extent feasible.

d. Ongoing performance discussions:

1. Informal discussions are a standard part of supervision and should occur throughout the annual assessment period. Discussions may be initiated by the rating official or employee. Discussions may be held one-on-one or in a work group. If an employee requests a discussion with his or her rating official to discuss his or her performance, it will be scheduled within twenty-one (21) calendar days, if possible.

2. Discussions should be candid, forthright dialogues between the rating official and employee(s) aimed at improving the work process or product and developing the employee. The discussion will provide the opportunity to assess accomplishments and progress and identify and resolve any problems in the employee's or work team's work product.

3. As appropriate, the rating official should provide additional guidance aimed at developing the employee(s), removing obstacles and improving the work product or outcome. Discussions will provide the employee the opportunity to seek further guidance and understanding of his or her work performance and offer suggestions for improving processes.

Section 7—Procedures

a. Bargaining unit employees will receive an annual performance rating for the performance cycle. Normally, performance ratings are issued in writing to the employees within thirty (30) calendar days following the end of the rating period. The performance cycle will be extended when an employee is on a Performance Improvement Plan (PIP) to allow completion of the PIP.

b. New employees must be working under a performance plan for a minimum of ninety (90) calendar days before a rating can be given**.**

c. In rare instances, when performance plan changes are made less than ninety (90) calendar days before the end of the rating period, the rating period will be extended to allow the employee the minimum observation time for an appropriate job performance rating.

d. In evaluating performance, no employee will be responsible for matters beyond his or her control.

e. Rating officials will give employees at least one formal written progress review, normally during the mid-point of the rating period. There can be more progress reviews, and one is required if the rating official believes the employee is not performing in a successful manner**.** The progress review will indicate to the employee what would be necessary for the employee's performance to improve.

f. Rating officials that move positions or leave government service will give employees a formal written progress review prior to their departure, if feasible under the circumstances. The content of this review will be considered by the replacement rating official in assessing the performance of an employee at the end of the annual rating period.

Section 8—Uses of the Performance Rating

The performance rating given to employees under this performance management system is used for a number of purposes, to include but not limited to:

a. An employee, whose most recent rating of record is at least "Achieved Results," will be entitled to appropriate within-grade increases.

b. The rating of record will be used in consideration for appropriate awards, promotions, and other personnel actions.

c. This performance rating will be considered in making determinations regarding Agency reductions-in-force (RIF) in accordance with the law, government regulation, and this CBA.

d. The rating of record may be used in evaluating candidates under the merit promotion system contained in this CBA.

e. Identifying systemic changes in operations, work processes, training, teamwork, etc.

Section 9—Performance Improvement Period

a. It is the responsibility of the Agency to monitor employee performance throughout the rating period. If at any time during the rating period, the rating official determines that an employee is performing at an unsuccessful level in one or more critical elements, the rating official will call for a meeting with the employee to discuss the employee's performance.

b. The rating official and employee will meet to attempt to identify the specific problem to determine the root cause and develop a written improvement plan.

c. The improvement plan will identify the critical element(s) and assigned task(s) for which performance is unacceptable and inform the employee of the performance standard(s) that must be attained in order to demonstrate acceptable performance. The plan will state that unless performance in a critical element(s) improves to, and is sustained at, an acceptable level for a minimum period of one (1) year, the employee may be reduced in grade, reassigned, or removed from federal service.

d. The improvement plan will afford the employee a reasonable opportunity to improve their performance and resolve the identified performance-related problem.

e. The improvement plan will be tailored to the specific needs of the employee and may include formal training, on-the-job training, counseling, assignment of a journeyman mentor, or other assistance as appropriate.

f. The improvement plan will state which supervisor or management officials will be available to guide, coach, and otherwise assist the employee in reaching "Achieved Results" performance.

g. The employee will be informed in writing that a Within-Grade Increase (WIGI) or award may be withheld while this level of performance continues.

h. The purpose of the performance improvement period is to help the employee improve.

i. At any time during the performance improvement period, the rating official may conclude that assistance is no longer necessary because the employee's performance has improved to at least "Achieved Results." The rating official will notify the employee of this determination in writing.

Section 10—Action Based on Unacceptable Performance

a. If remedial action fails and the employee's performance is determined to be unacceptable, the supervisor will provide written notification to the employee of one of the following actions:

1. The employee may be permanently reassigned or temporarily detailed to another position in the same grade for which he or she qualifies.

2. When the employee is not capable of performing any position at the same grade but is capable of performing a position at a lesser grade, in the same or different job series, the supervisor may propose a demotion to a position at a lower grade.

3. The supervisor may propose a removal; the Agency will accept an employee's request to resign in lieu of removal.

b. An employee who is permanently reassigned, temporarily detailed, or demoted to a position at a lower grade based on unacceptable performance will receive a new performance plan, in accordance with this Article.

c. An employee whose reduction in grade or removal is proposed for unacceptable performance is entitled to:

1. A thirty (30) calendar day advance written notice of the proposed action, which identifies the specific basis for the proposed action including specific instances of unacceptable performance;

2. A representative. The employee must inform the deciding official, in writing, of the representative's name;

3. A reasonable time, normally not to exceed fifteen (15) calendar days, to answer orally and in writing and to provide witnesses and work product or other evidence to challenge the proposed action; and

4. Absent extenuating circumstances, employee requests for reasonable extensions of time to answer a proposed action will be granted.

d. The employee will be given a decision on the proposed demotion or removal in writing. Unless the action is proposed by the Head of the Agency, the deciding official will be at the equivalent or higher management level than the proposing official. The decision will:

1. Specify the instances of unacceptable performance and the critical element(s) for which the employee did not achieve "Achieved Results" performance, and on what the decision is based; and

2. Specify the action to be taken, the effective date, and inform the employee of his or her right to appeal to the MSPB in accordance with applicable law and of the Union's right, on behalf of the employee, to timely file a written request to invoke arbitration under the terms of this CBA, but not both.

e. An employee shall be deemed to have exercised their option when the employee timely initiates an appeal under the statutory procedure, or when the Union, on behalf of the employee, timely files a written request to invoke arbitration, whichever occurs first. Arbitration must be invoked no later than thirty (30) days after the effective date of the action unless EEO counseling is initiated.

Section 11—Electronic Performance Management System

Should the Agency propose to establish or change an electronic system for processing any part of the Performance Management System, the Union will be notified and have an opportunity to bargain in accordance with the Mid-Term Bargaining Article of this CBA. No system changes will be implemented until negotiations are completed.

Article 26
Training and Career Development

Section 1—General

a. The training and development of employees is important in carrying out the mission of the Agency. The Agency is responsible for determining the training necessary to meet its mission, and for making such training available to bargaining unit employees.

b. Employee training and development will be administered in accordance with all applicable laws, rules, regulations, and the provisions of this CBA.

c. Either employees or managers may initiate discussion of individual training needs. Such discussions may or may not be linked to an Individual Development Plan (IDP).

d. The Agency shall, to the maximum extent practical, ensure the scheduling of training and education, over which the Agency has administrative control, occurs during the normal workweek, including travel to and from training.

e. Employees may be granted variations within the normal workweek, including LWOP, for employee-initiated outside training when the primary objective of the training is to improve the employees' job performance or mission- related career development.

Section 2—Non-Discrimination

The nomination and/or selection of employees to participate in training and career development programs and courses shall be made without regard to race, color, religion, sex, national origin, disability, age, sexual orientation, parental status, genetic information, political affiliation, or Union membership or activity, and shall be in accordance with equal employment opportunity guidelines and consistent with other applicable laws, rules, regulations, and the terms of this CBA.

Section 3—Training Programs

a. The Agency will post information concerning training and education programs as they become available by email, and Agency websites. The Agency will remind employees, at least annually, of the availability of government-sponsored training programs, the general scope of training, the criteria for approval of training, and the nomination procedures. The Agency will advise individual employees, upon request, of currently available government-sponsored training courses so as to provide the employee the opportunity to express timely interest.

b. Training nominations and/or approvals will be based on the potential use of the training to improve organizational and individual performance and other criteria established by applicable law, rule, regulation, and the provisions of this CBA. Nomination and

selection for training and career development programs and courses will be made in a fair and equitable manner.

c. When an employee is nominated for training, a copy of the employee's IDP (if any) will be considered in the process. Employees will be notified in writing of the approval or disapproval of their nominations and the reason(s) for disapproval. To the extent feasible, employees will be notified of the approval or disapproval prior to the starting date of the training.

d. The Agency will record in the employees' training records all completed training, including the record of external training and educational achievements that employees furnish to the Agency.

e. Appropriate training will be provided to all employees whose positions are abolished or re-engineered before expecting adversely impacted employees to perform new or altered duties.

Section 4—Career Development

a. An IDP is a flexible document jointly developed between the supervisor, or other Agency designated management official, and an employee to be used as a roadmap for the employee's professional and career development. The primary emphasis of the plan will be, first to address the competencies needed by the employee in his or her current position; second, to prepare the employee for new career opportunities; and third, to address the competencies needed for advancement beyond his or her current skill level.

b. Each plan shall establish a series of milestones and shall state the responsibilities of each Party to realize such milestones. Employees who have an IDP approved by their supervisor may be granted a reasonable amount of scheduled duty time for self-directed training or developmental activities, if such activities are related to the employee's current or prospective job duties.

c. Upon request, the supervisor or other Agency-designated management official will assist the employee in the preparation of the IDP and will review it with the employee to ensure that the plan conforms to organizational and individual career needs. Employees may seek assistance from employee development specialists, or others who may provide advice and assistance in the preparation of the plan.

Section 5—Training and Career Development Expenses

a. Employees will not incur costs for Agency-required training, to include training necessary to obtain and/or maintain certification and/or licensure required for the performance of their assigned duties.

b. When training not required by the Agency is approved, the Agency may pay costs of tuition, required textbooks, and other expenses as appropriate, and pay travel costs, pursuant to applicable laws, rules, regulations, and this CBA, subject to fiscal considerations.

c. The Agency may pay employees' expenses for attending conferences and meetings authorized by 5 U.S.C. § 4110 when the following criteria are met, as provided in 5 C.F.R. § 410.404:

   1. The announced purpose of the conference is educational or instructional;

   2. The content is germane to improving individual or organizational performance;

   3. Most of the conference consists of planned, organized exchanges of information between presenters and audience; and

   4. The employee will derive developmental benefits through attending.

d. To the extent that the Agency has a condition of employment that employees must be members of particular professional societies or organizations, the Agency will reimburse employees for their dues, subject to the availability of funds.

e. The Agency may reimburse employees' appropriate costs associated with the pursuit of an academic degree for shortage occupations to the extent permitted by 5 U.S.C. § 4107 and 5 CFR 410.308.

Article 27
Merit Promotion

Section 1—Purpose

The purpose and intent of this Article is to ensure that merit promotion principles are applied in a consistent manner, with equity to all employees, and without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex, national origin, disability, age, genetic information or sexual orientation and shall be based solely on job-related criteria.

Section 2—Actions Covered By Competitive Procedures

In accordance with 5 C.F.R. § 335.103, competitive procedures will apply to the following types of personnel actions for bargaining unit positions:

a. Promotions, except those listed in Section 3.0 of this Article.

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

c. Details over one hundred and twenty (120) calendar days to higher graded positions or to positions with known promotion potential greater than the employee's present position.

d. Selection for training required for promotion.

e. Selection for positions that provide specialized experience needed for promotion

f. Reassignment or demotion to a position with greater promotion potential than the position last held. Exceptions are actions permitted by reduction-in-force regulations and reassignment of an intern or trainee as part of the training and development plan.

g. Transfer to a higher-grade position never previously held.

h. Reinstatement to a permanent or temporary position at a higher grade level than previously held in a non-temporary position in the competitive service.

Section 3—Actions not Covered by Competitive Procedures

In accordance with 5 C.F.R. § 335.103, competitive procedures will not apply to the following personnel actions, which are exceptions to Section 2 above:

a. Career Ladder Promotions: Career ladder promotions are permitted when an employee is appointed or assigned to any grade level below the established full performance level of the position (i.e. the position has a documented career ladder and promotion potential). These promotions may be made non- competitively for any employee who entered the

career ladder by:

1. Competitive procedures;

2. Competitive appointment from a certificate of eligibility (through OPM or delegated examining authority); or

3. Non-competitive appointment under special authority.

b. Promotion Based on Reclassification when:

1. No significant change occurs in the duties or responsibilities of the position and the position is upgraded due to issuance of a new classification standard, an updated Agency-wide classification policy or the correction of a classification error;

2. The position is upgraded due to accretion of additional duties and responsibilities and the following provisions are met:

a) The employee continues to perform the same basic functions in the same organization, working for the same supervisor (the duties of the former position are absorbed into the new position, and the former position is abolished);

b) The new position has no promotion potential;

c) The additional duties and responsibilities assigned or accrued by the incumbent do not adversely affect or impact other positions in the unit; and,

d) The accretion is supported by a written analysis of the position (which may involve an audit with the employee and/or the employee's supervisor, or other fact gathering method).

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

1. The assignment was originally made under competitive procedures;

2. It was known to all competitors at the time that the assignment may lead to a permanent position.

d. Temporary Promotion of an employee for less than one hundred and twenty (120) calendar days; or for more than one hundred and twenty (120) calendar days to a grade level previously held on a permanent basis, unless the employee was demoted for reason related to performance or misconduct.

e. Placement as a Result of Priority Consideration when the referral is a remedy for candidates not given proper consideration in a competitive promotion action.

f. Reduction in Force Placements that result in an employee receiving a position with higher promotion potential.

g. Promotion to a Grade Previously Held on a permanent basis in the competitive service, from which the employee was separated or demoted for other than performance or conduct reasons.

h. Promotion, Reassignment, Demotion, Transfer, Reinstatement, or Detail to a Position Having No Higher Promotion Potential than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons.

i. Promotion Resulting from Successful Completion of a Training Program for which the employee was competitively selected.

j. Selection from the Re-employment Priority List at the same or lower grade level than the position from which previously separated.

k. Reinstatement to any Position if a career or career conditional employee who served under a career SES appointment consistent with 5 C.F.R. §335.103(c)(3).

l. Promotion as a Legal Remedy as ordered and agreed upon in a legal or administrative proceeding.

m. Details for one hundred and twenty (120) calendar days or less to a higher graded position or to a position with known promotion potential.

Section 4—Temporary Promotions

Bargaining unit employees will not be detailed or temporarily promoted to higher graded positions for more than a cumulative total of one hundred and twenty (120) calendar days during any twelve (12) month period without the use of competitive procedures.

Section 5—Priority Consideration Before Using Competitive Procedures

a. Involuntarily Demoted Employees who are involuntarily demoted in the Agency without personal cause or who are in grade retention status are entitled to consideration for re-promotion before using the competitive procedures. This applies to positions at the employee's former grade or at any intervening grades that are to be filled under competitive procedures. The right to this consideration does not apply to a position with promotion potential higher than that of the position held at the time of the change to the lower grade. Upon request, the selecting official will explain in writing, within 30 calendar days, any non-selection.

b. For Employees Not Given Proper Consideration

1. An employee who would have been referred but was not given proper consideration due to a procedural violation or error in a previous competitive placement action, must be given advanced consideration for the next vacancy which becomes available in the same occupational family as the position denied. This means that the employee must be referred to the selecting official for consideration before using the competitive procedures.

2. If selected on the basis of advance consideration, the employee is promoted or reassigned noncompetitively.

3. If the employee refuses consideration, the employee forfeits his or her entitlement to the advance consideration.

Section 6—Scope of Competition

The decision as to what combination of recruitment methods will be used to fill a particular vacancy must be based on sound consideration, and may vary for the same type of position depending upon circumstances in place at the time of the recruitment. Hiring managers can select the area of consideration most appropriate for the vacant position being filled. Considerations on how widely to compete a position may include available applicant pool within the Department of Transportation and specialization of certain required skill sets.

Section 7—Vacancy Announcements of Positions within the Bargaining Unit

a. All vacancies and training within the bargaining unit, which require competitive procedures in accordance with this Article, will be announced electronically and posted on the Agency's website.

b. Vacancy announcements will include:

1. Statement of nondiscrimination;

2. Announcement number and posting and closing dates;

3. Position title(s), series and grade(s);

4. Number of anticipated vacancies to be filled;

5. Area of Consideration;

6. Test to be used, if any;

7. Description of promotion potential, if any;

8. All selective placement factors;

9. When using an automated recruitment system, each factor/question used to determine the basic eligibility and/or best-qualified candidates will be available to access on each announcement through hyperlink;

10. Geographic and organizational location;

11. Whether or not relocation expenses will be paid;

12. Summary of the duties of the position;

13. Summary of eligibility and qualification requirements;

14. Permanent or temporary nature, and, if temporary, the duration and if the promotion may be made permanent;

15. Contact information of the DOT Automated Staffing Office for information relating to the announcement;

16. Special working conditions, such as tour of duty, travel requirements, expected overtime, etc.;

17. A statement that the position is in the AFGE bargaining unit;

18. The different levels at which the position may be filled if it is a multiple-level announcement;

19. Specific information relevant to the evaluation of the candidates, e.g., writing samples, portfolios;

20. A statement as to whether the position is subject to drug testing;

21. A statement if the position is sensitive and if the appointment is subject to reappointment investigation.

c. Vacancy announcements will be open for a minimum of five (5) calendar days. However, a limit to the number of applicants may be imposed,

d. Open continuous announcements and announcements for standing registers may be used.

e. Amending Vacancy Announcements

1. Amending or re-advertising vacancy announcements: If a vacancy announcement has been posted and is later found to contain a substantial error, a determination will

be made in conjunction with the Human Resource Division and DOT Automated Staffing Office whether the announcement should be amended or re-advertised. All applicants will be notified. The amendment should cite the change(s) and indicate whether or not the original applicants need to re-file in order to be considered.

2. Notice of cancellation of vacancy announcements will be communicated to applicants through the automated recruitment system.

Section 8—Employee Applications

a. Filing an Application

To be considered for a vacancy, an employee must sign and file the appropriate application as described in the announcement. Where an area of automatic consideration is used, an employee need not file unless the announcement specifies that an application is necessary in order to address specific assessment criteria.

b. Time Limits

The time limits for filing for a posted vacancy are as follows:

1. Open Continuous Announcements: An employee may file at any time as outlined on the vacancy announcement.

2. Individual Announcements: The closing date reflected on the vacancy announcement will be the acceptance deadline.

Section 9—Establishing the Best Qualified List

a. To be eligible for promotion or placement, candidates shall meet the minimum qualification standards and selective placement factors identified as essential for successful performance at the closing date of the announcement or thirty (30) calendar days from the referral from a standing register. Ineligible applicants shall be notified through USAJOBS of the determination of ineligibility prior to submission of the referral list to the selecting official.

b. Assessment criteria used to evaluate candidates must be fair, job related, and applied equitably.

c. A job analysis must be conducted to determine the competencies required for the position. This may include the knowledge, skills, abilities (KSA), and other characteristics and (if applicable) selective factors required to identify the best- qualified candidates for the position to be filled. Job analysis requirements shall conform to the Uniform Guidelines on Employee Selection Procedures at 29 C.F.R. § 1607, and 5 C.F.R. § 300, Subpart A.

d. Qualified candidates competing for promotion shall be rated to determine their possession of the competencies required to be referred to the selecting official.

e. A rating guide shall be based on a job analysis to identify the competencies needed for successful job performance. Competencies will differentiate superior candidates from other employees or applicants.

f. Promotion eligible candidates will be rated against the KSAs/competencies set forth in the rating plan. Candidates will be identified as either "best-qualified" or "qualified" based on the scores received in the evaluation process. When more than ten (10) candidates are rated as eligible, best-qualified candidates will be determined by using all of the ranking factors listed in the vacancy announcement in the evaluation process. Candidates will be ranked according to their rating scores assigned by the automated hiring system or promotion panel/ranking official.

g. When there are more than ten (10) qualified competitive candidates.

1. The Best Qualified candidates who will be referred for consideration will be determined based on the most logical (natural) break in the scores; i.e., two (2) or more points. However, in the event the natural break method results in more than nine (9) Best Qualified candidates, the HR Official will resort to identifying only the top ten (10) numerically ranked candidates who will then be forwarded to the selecting official/panel in alphabetical order. All tied scores (at number 10) will be forwarded to the selecting official. Candidates will be ranked according to the rating score assigned by the automated hiring system or Subject Matter Expert and referred in alphabetical order.

2. If a Best Qualified certificate is to be used for more than one (1) vacancy, an additional Best Qualified candidate (if available) may be added for each additional vacancy.

h. If there are fewer than ten (10) Best Qualified candidates, only the Best Qualified candidates will be referred.

i. If there are no Best Qualified candidates, then the qualified candidates may be referred in alphabetical order.

Section 10—Selection Procedures

a. If any of the candidates on a list are interviewed, the selecting official must interview all candidates on that list prior to making a selection from that list.

b. The selecting official will ask valid job-related interview questions that allow for an objective evaluation of the candidate's competencies as they relate to the position being filled.

c. When a face-to-face interview is not possible, a telephone interview is acceptable.

d. The selecting official has the right to select or not select any candidate(s) referred.

e. The institutional knowledge and mission experience of internal candidates will be fully considered by the selecting official, as appropriate.

f. The selecting official will give consideration to the candidates' fitness and qualifications, without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex, national origin, non-disqualifying handicapping condition, sexual orientation, or age. The selection shall be based solely on job-related criteria.

g. If a rationale for the selection is prepared, it will be made a part of the promotion file.

h. Release and Notification of Applicants

The Human Resources Division will work with program officials to establish mutually agreeable release dates based on mission and program requirements. Normally, an employee will be released no later than one (1) complete pay period for promotions, following clearance by security and issuance the final offer letter. When local workforce and program conditions permit, an employee will be released no later than two (2) complete pay periods for reassignments, following clearance by security and issuance of the final offer letter. When an employee is nearing the end of a waiting period for a within-grade increase, consideration should be given to releasing the employee at the beginning of a pay period on or after the effective date of the within-grade increase, provided such an action would benefit the employee.

i. Positions with Mandatory Training

Bargaining unit employees selected to positions with mandatory training requirements will be given all the necessary assistance and tools to succeed in the new position. Should they still fail to meet those training requirements, they will be given first consideration for their previous position if not filled or an equivalent position for which they qualify. If placement is not successful and the employee is removed, the employee is eligible and will be considered for reinstatement in accordance with OPM regulations.

j. Employee Information

1. Upon request, an employee will be provided, in writing the following information for each vacancy applied for:

a. the name of the individual(s) selected;

b. information on whether the candidate was found qualified;

c. information on whether the candidate was among those referred to the selecting official;

d. the candidate's own rating or score; and

e. the name of the selecting official.

2. This information will be provided within thirty (30) calendar days after the appointment of the selectee.

Section 11—Career Ladder Promotions

It is the policy of the Agency to provide appropriate opportunities for bargaining unit employees to develop and advance in their careers.

a. Maximum Opportunity

Employees in career ladder positions will be given maximum opportunity to reach the full potential of their assigned career ladders. Upon placing an employee in a career ladder position, the supervisor will identify the job requirements and expectations to reach the next higher level in writing. The supervisor will hold discussions with the employee at each level of the employee's progression within the career ladder.

b. Progression Within a Career Ladder

Career ladder promotions are not automatic; an acceptable level of performance must be demonstrated for progression. Employees in career ladders will clearly demonstrate the ability to perform at the next higher grade level before being promoted to the next grade in the career ladder. The Agency must have the appropriate level of work available and necessary budgetary resources to support the promotion. Once the promotion has been made, supervisors will assign work at the new grade level.

c. Timing for Career Ladder Promotions

1. At the time an employee meets time-in-grade and any other legal promotion requirements, the supervisor will make a decision to promote or not to promote. This decision will be made in a timely manner. Upon request, a decision not to recommend for promotion will be provided to the employee in writing.

2. If an employee is certified as successful and is meeting the career ladder promotion criteria, the Agency will certify the promotion to be effective at the beginning of the first pay period after the requirements are met.

d. Ongoing Feedback

The supervisor will periodically provide feedback to the employee about their

performance in the career ladder position.

e. Failure to Meet Promotion Criteria

1. Employees not meeting the criteria for promotion will be counseled by their supervisor regarding areas needing improvement before the promotion can be effected in accordance with applicable law, rules, or regulation.

2. The employee will be provided with at least one written notice, normally at the midterm review, prior to promotion eligibility. The written notice will specify what the employee needs to do to be promoted.

3. Any time a supervisor and/or employee recognizes the employee's need for assistance in meeting the career ladder promotion criteria, the supervisor and employee will work together to assist the employee in meeting the specific promotion requirements. Such assistance should identify applicable training as well as any other appropriate support. Employees may request Union assistance.

Section 12—Promotion Records for Unit Positions

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

Article 28
Within Grade Increases

Section 1—General

Normally, Within Grade Increases (WIGI) are awarded if the employee has maintained an acceptable level of competence. The WIGI will be effective on the first day of the first pay period following the end of the required waiting period, provided:

a. The employee has attained an acceptable level of competence, defined as "Achieved Results" (or equivalent) performance on his or her most recent rating of record under the Performance Management Article; and

b. The employee has not received an equivalent increase in pay during that required waiting period.

Section 2—Procedures for WIGI Denial and Reconsideration

a. When an employee has been assigned to a current supervisor for fewer than ninety (90) calendar days, the supervisor shall secure the written views of the employee's prior supervisor before making a performance determination.

b. An employee will normally be notified in writing at least ninety (90) calendar days before the end of the required waiting period for eligibility for a WIGI that his or her performance is marginal and is leaning toward an unacceptable level of performance, and unless his or her performance improves the WIGI may be denied.

c. If an employee receives an unacceptable rating of record and their WIGI is denied, and thereafter the employee's performance improves to an acceptable level, the WIGI will be issued within the next full pay period following the issuance of an acceptable rating of record.

d. A WIGI may be denied when an employee's misconduct affects his or her ability to successfully perform the duties of the position. Denial of a WIGI will not to be used as an alternative to discipline.

e. If information becomes available that an employee may be guilty of misconduct that could impact the granting of a WIGI, the WIGI may be delayed, pending the outcome of an investigation. However, if the investigation shows that there was no misconduct affecting the employee's performance, the WIGI effective date will remain the first day of the first pay period following the end of the required waiting period.

f. The employee will be notified in writing when being denied a WIGI; the notice will include the following:

    1. A statement that the employee's work has been reviewed;

2. A statement that the employee's work has been determined to be of less than an acceptable level of competence;

3. A statement that identifies the performance elements in which the employee's performance was less than fully successful;

4. Specific examples of how the employee's performance failed to meet the fully successful level for that particular performance element;

5. A statement that the employee has the right to request, in writing, a reconsideration of the negative determination, provided the request is made within twenty-one (21) calendar days of the employee's receipt of the negative determination. The reconsideration official will be at a level higher than the rating official;

6. The name and title of the reconsideration official to whom the employee may submit a request;

7. A statement that the employee may have a Union representative in presenting a request to the reconsideration official;

8. A statement that the employee is authorized a reasonable amount of official time to review the materials relied upon in reaching the negative determination and to prepare a response.

g. A decision on reconsideration will be made within thirty (30) calendar days from the date of the request. If the reconsideration official determines that the employee has met an acceptable level of competence, the WIGI effective date will remain the first day of the first pay period following the end of the required waiting period.

h. If the reconsideration official upholds the negative determination, the employee may file a grievance. The grievance would be filed at the final step of the grievance procedure.

Section 3—WIGI Approval after a Denial

When an employee's performance is determined to be at an acceptable level of competence following an earlier negative final determination, the effective date of the WIGI will be the first day of the first full pay period following the new determination and rating of record. Supervisors will review performance at least every ninety (90) calendar days and grant the WIGI as appropriate.

Article 29
Awards

Section 1—Types of Awards

a. Performance awards, Quality Step Increases (QSI), Time Off Awards (TOA), Special Act Awards, Honorary Awards, and On-the-Spot Awards are granted by the Agency on the basis of merit, and within applicable budget limitations, to individuals or groups. Such awards will be granted in a fair, consistent, and objective manner without discrimination.

b. If the Agency establishes any budgets for General Schedule employee awards, the Agency will notify the Union of those budgets and the amounts to be allocated.

c. Should the Agency determine, at any time during the life of this CBA, to modify its policy on awards, it shall give the Union formal notification in advance of its intention to do so. Upon such notice, or upon any deviation from the established budgets, either Party may negotiate the procedures and appropriate arrangements of the Agency's proposed change and/or deviation. Such negotiations shall be conducted in accordance with the provisions of Mid- Term Bargaining provisions of this CBA.

d. The Agency may negotiate with the Local Unions prior to the distribution of the awards to the extent allowed by law.

Section 2—Performance Awards

Performance awards are monetary awards earned as a result of an employee's annual performance rating and are allocated and distributed based on performance as documented by the current year's performance evaluation.

Section 3—Time Off Awards

a. The purpose of the TOA is to increase employee productivity and creativity by rewarding employee contributions to the quality, efficiency, or economy of Government operations. The award is also intended to increase the quality of work life for all employees, as well as encourage and recognize onetime, non-recurring accomplishments above or beyond normal job requirements.

b. A TOA provides an employee with an excused absence without charge to leave or loss of pay. Bargaining Unit employees shall be eligible for a TOA unless an employee is or was on a leave restriction letter within the previous twelve (12) months. However, employees on leave restriction are not precluded from receiving performance awards.

Article 30
Position Classification

Section 1—Position Descriptions (PDs)

a. Employees are entitled to a complete and accurate PD, which clearly and concisely states the major and grade controlling duties, responsibilities, and supervisory relationships of the position. This will be provided to the employee at the time of assignment or upon request.

b. PDs will be current, accurate, and classified to the proper occupational title, series, and grade in accordance with Chapter 51 of Title 5 U.S.C and OPM regulations.

c. All Agency information provided to OPM in connection with classification standards and current position descriptions will be provided to the employee upon request.

d. Whenever an employee's existing position description is amended or replaced with a new description, the Agency will provide copies of the amended or new description to the affected employee at least two (2) weeks in advance of the proposed effective date.

e. The Agency will apply any new or revised OPM classifications or job grading standards no later than six (6) months following its issuance, or as directed by OPM.

f. The Union will be provided the opportunity to review and provide input for consideration on proposed changes in PDs that will result in a reclassification of a bargaining unit position. Upon request, the Agency will provide the Union with all supporting evidence and the rationale used for the proposed changes.

g. The phrase "other duties as assigned" and other phrases having similar meaning as used in position descriptions, means duties related to the basic duties of the position. These phrases shall not be used to avoid updating a position description.

h. If an employee has a question concerning his or her classification or position description, he or she is entitled to discuss his or her position description with his or her supervisor. If the employee wishes to pursue the matter further, he or she may request a desk audit, file a grievance as appropriate, or file a classification appeal.

Section 2—Desk Audits

a. Employees have the right to Union assistance in desk audits and classification appeals. Employees or their designated representatives may request a desk audit through the employee's supervisor. Upon such notification, the Agency will acknowledge receipt of the request, and, if the Agency agrees to the audit, provide a reasonable date and time for the audit to be accomplished. If the Agency does not agree to the employee's request for an audit, an explanation will be provided to the employee or a designated Union representative.

b. Employees, who are the subject of a desk audit will be provided timely notice by the Agency prior to the desk audit. Notices will identify the position, reason, purpose, and date/time for the audit.

c. While a desk audit is in process, the Agency will not reassign duties for the sole purpose of avoiding reclassification of the position.

d. Upon completion of the audit, the Agency shall designate an official to discuss the findings with the employee and the representative.

Section 3—New Classifications

a. Classification decisions rendered by the Agency or OPM having the effect of establishing a grade level that did not exist before within an occupation will be forwarded by the Agency to the Union with the basis for that decision.

b. Grade increases resulting from the application of a new classification standard or correction of a classification error will normally become effective no later than the beginning of the first full pay period following a management determination, provided the applicable qualification, performance, or other requirements for the position are met by the affected employee(s).

Section 4—Downgrades

a. For a downgraded position, the employee's pay and grade will be set in accordance with law and regulations.

b. An employee whose position is reclassified to a lower grade which is based in whole or in part on a classification decision is entitled to a prompt written notice from the Agency. This notice will be issued to affected employees within twenty-one (21) calendar days of the decision. The notice will explain:

1. The reasons for the reclassification action;

2. The employee’s right to appeal the classification decision;

3. The time limits within which the employee’s appeal must be filed in order to preserve any retroactive benefits under 5 C.F.R. § 511.703;

4. Any other appeal or grievance rights available under applicable law, rule, regulation, or this CBA; and

5. The effective date of the action.

c. Interested employees who have been downgraded as a result of a classification action shall be entitled to priority referral for noncompetitive consideration for permanent promotion prior to a vacancy being filled by competitive promotion under the Merit Promotion Article of this CBA. Such employees shall be entitled to priority referral and consideration only to vacancies for which the downgraded employee is qualified up to the grade level or the equivalent level of the position from which downgraded.

Section 5—Classification Appeals

Employees have a right to appeal a classification decision to the Agency and/or to OPM through its regulations, including 5 C.F.R. Part 511, Subpart F.

Article 31
Transit Benefits

Section 1—General

Federal Agencies are authorized under 5 U.S.C. § 7905 to establish programs to encourage employees to use means other than single-occupancy motor vehicles to travel to and from work.

a. The Agency will support the transit benefit program to the maximum extent allowable as a non-taxable benefit under the Internal Revenue Code and authorizing legislation. The Agency will notify the Union and employees when the amount of the IRS non-taxable benefits change. The amount of a transit benefit depends on the employee's allowable commuting costs.

b. Options available to employees under this program may include:

   1. Transit passes, including reimbursements therefore (but only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the Agency);

   2. Agency furnished space, facilities, or services to bicyclists; and

   3. Any other non-monetary incentives that the Agency may offer.

c. If either Party proposes any change to the options addressed in section b, they will negotiate to the extent provided by law.

d. As soon as the Agency's financial information/budget for each fiscal year becomes available, it will inform the Union whether the full amount of funding is available for transit benefits. If the Agency determines that the full amount of funding is not available due to budgetary constraints, and it is unable to continue to provide employees with the maximum allowable transit benefit, it will notify the Union in a timely manner and the Union may choose to re-open negotiations on this Article.

Article 32
Travel

Section 1—General

The rules, policy, and procedures applicable to travel will be consistent with the Federal Travel Regulations (FTR).

a. When employees travel on official business, the authorization will be prepared by the employee and authorized consistent with the applicable law, rule, regulation, and the terms of this CBA.

b. When employees travel locally and written authorization is not required, such travel will be paid consistent with applicable law, rule, regulation, and the terms of this CBA.

c. Compensation during travel is governed by applicable law, rule, regulation, and the Overtime Article of this CBA.

Section 2—Scheduling

a. Whenever feasible, the Agency will schedule travel during employees' regularly scheduled work hours. If circumstances require the employee's presence on Monday, too early to permit travel that day, the employee may perform the travel on the preceding day (Sunday), leaving their residence or Official Duty Station (ODS) at a reasonable time. If the employee prefers, travel may be permitted during duty hours on the preceding Friday. Per diem reimbursement will be limited to that which would have been payable if the departure was made on Sunday.

b. If the travel is expected to require employees to be absent from their ODS for more than thirty (30) calendar days, employees will be given at least thirty (30) calendar days prior notification of their date of departure, when practicable.

Section 3—Hours of Work

a. In accordance with 5 U.S.C. § 5542(b)(2) and 5 C.F.R. § 550.112(g), time in travel status away from an employee's ODS constitutes hours of work when it occurs within the days and hours of an employee's regularly scheduled administrative workweek.

b. For FLSA covered employees, time spent traveling is hours of work in accordance with FLSA and 5 C.F.R. § 551.422.

c. The Agency may not adjust an employee's normal regularly scheduled administrative workweek solely to include travel hours that would not otherwise be considered hours of work.

Section 4—Compensatory Time

a. In accordance with 5 U.S.C. § 5550b and 5 C.F.R. Part 550, Subpart N, in connection with official travel, an employee may earn compensatory time off for time spent in a travel status away from the employee's ODS when such time is not otherwise compensable.

b. Employees must submit a request for scheduled travel compensatory time for approval prior to travel.

c. For the purpose of compensatory time off for travel, time in a travel status includes:

   1. Time spent traveling between the ODS and a temporary duty station;

   2. Time spent traveling between two temporary duty stations; and

   3. The "usual waiting time" preceding or interrupting such travel.

d. An "extended" waiting period—i.e., an unusually long wait during which the employee is free to rest, sleep, or otherwise use the time for the employee's own purposes—is not considered time in a travel status.

e. Travel outside of regular business hours may be subject to an offset for commuting or meal time under by 5 C.F.R. Part 550, Subpart N.

Section 5—Per Diem (Lodging, Meals, and Incidentals)

Employees who travel for government business are entitled to a per diem when performing official travel away from the employee's ODS, which may include actual expenses as are necessary, in accordance with the FTR.

Section 6—Travel Authorizations and Vouchers

a. All Agency personnel must process travel authorizations and vouchers through the DOT Travel Management System. Travel authorizations must be approved in advance of travel, unless excepted by DOT policy, e.g., emergency events.

b. Employees are expected to submit travel vouchers within seven (7) calendar days of the last day of travel as specified on an approved travel authorization. Failure to do so may result in a delay of reimbursement. Employees in travel status for an extended period of time must submit travel vouchers at least every twenty-one (21) calendar days.

c. The Agency will make a good faith effort to provide the approvals necessary within the DOT Travel Management System to ensure that travel vouchers submitted by employees are forwarded for processing within seven (7) calendar days after an accurate and

complete voucher is entered into that system.

Section 7—Accommodating Special Needs

a. Consistent with the Agency's obligations under applicable laws, rules, regulations, to include 41 C.F.R. § 301-13.3 and the provisions of this CBA, it shall provide reasonable accommodations to employees with special needs.

b. Reasonable accommodations may include, but are not limited to:

1. Transportation and per diem expenses incurred by a family member or other attendant who must travel with the employee to make the trip possible;

2. Specialized transportation to, from, and/or at duty locations;

3. Specialized services provided by a common carrier to accommodate employees' special needs;

4. Costs for handling baggage that is a direct result of employees' special needs;

5. Renting and/or transporting a wheelchair;

6. Other than coach-class accommodations when necessary to accommodate employees' special needs; and

7. Services of an attendant, when necessary, to accommodate employees' special needs.

Section 8—Mode of Transportation

a. When an employee must travel for work, the Agency may select the method of transportation that is most advantageous to the government when cost and other factors are considered as identified by 5 U.S.C. § 5733 and 41 C.F.R. § 301-10.

b. The Agency may not require an employee to use the employee's privately owned vehicle (POV) for official travel. However, when an employee is authorized to use a POV, the Agency will reimburse the employee the mileage allowance and related expenses as authorized by the FTR.

c. An employee authorized to use a POV will not be required to carry any passenger(s).

d. The Agency should grant duty time or administrative leave to an employee when an emergency arises while the employee is in official travel status driving a POV. In such situations, the employee will, as soon as practicable (within an hour, if possible), provide the supervisor with an estimate of the situation and obtain appropriate instructions. Duty

time or administrative leave should be granted by the Agency upon presentation by the employee of reasonable, acceptable explanation, or documentation relating to the emergency.

Article 33
Government Travel Cards (GTC)

Section 1—Introduction

The Travel and Transportation Reform Act of 1998 mandates the use of the government-sponsored, contractor-issued travel cards—"Government Travel Cards" (GTC)—by employees who meet the Agency's requirements for issuance of the card. A GTC is a charge card used by authorized individuals to pay for official travel and transportation related expenses for which the contractor bills the employee.

Section 2—Governing Law, Regulation and Policy

a. The Parties agree, where applicable, employees will obtain and use GTC in accordance with the FTR; the OMB Circular A-123, Appendix B; the Travel and Transportation Reform Act of 1998; the DOT Travel Card Management Policy dated January 1, 2010; and this CBA.

b. Any change to the OMB Circular A-123, Appendix B, or any other law, rule, regulation, or policy that affects the GTC program requires notice to the Union and an opportunity to bargain, to the extent permitted by law, prior to its implementation.

c. Upon request, the Agency will provide the Union with copies of relevant agreements between the Agency and GTC contractors.

Section 3—Traveler Use and Payment

a. A GTC holder must use the GTC for all expenses related to official travel and may not use personal funds (cash, personal credit cards, etc.) to pay such transactions when the GTC serves as an acceptable alternate method of payment.

b. A GTC may not be used to complete any transactions, personal or otherwise, unrelated to official travel, including payment for conference registration fees.

c. An employee who holds a GTC is responsible for payment in full of undisputed balances in monthly billing statements from the GTC service provider regardless of whether or not reimbursement for the travel has occurred.

d. Any failure to adhere to applicable law, regulation, and/or policy, including those that govern the prompt payment of undisputed balances, will subject a GTC holder to administrative or disciplinary/adverse action in accordance with the penalties set forth in the Agency's Travel Card Management Policy.

e. The Agency may initiate salary offset, defined as collecting undisputed, delinquent GTC balances, via direct deductions from an employee's payroll disbursement or retirement annuity, on behalf of the GTC service provider.

f. Discipline and negative credit impact are not appropriate for instances or events that are not within the direct control of the employee.

g. The Agency shall take reasonable steps to ensure bargaining unit employees are protected from adverse impact pursuant to the appropriate use of the GTC for official travel purposes, consistent with applicable regulations and the terms of this CBA, including but not limited to:

1. Providing periodic training for all employees on the GTC program policies and procedures to help ensure compliance and to minimize any adverse impact from the use of a GTC.

2. Ensuring the procedure to dispute a GTC transaction is communicated to bargaining unit employees and that bargaining unit members will not be required to pay any part of any appropriately disputed billing to the contractor pending resolution of that dispute.

3. Notifying employees of the Agency Point of Contact for getting assistance with any GTC issue.

Section 4—Exemptions

The Agency may exempt bargaining unit employees from using a GTC when:

a. Payment through a GTC is impractical or imposes unreasonable burdens or costs on employees or agencies;

b. The employee is an infrequent traveler; or

c. It is in the best interest of the United States to do so.

Section 5—Credit Worthiness

a. Credit worthiness requirements for bargaining unit employees regarding the GTC Program shall be consistent with OMB Circular A-123, Appendix B, Chapter 6, Credit Worthiness.

b. If it is not possible to issue an unrestricted GTC to a particular employee, the travel card service provider will issue the applicant a restricted travel card.

Article 34
Safety, Health, and Wellness

Section 1—General

a. Maintaining safe and healthful work environments, as a shared value by the Union and Agency, is necessary for the accomplishment of the Agency's mission, and contributes to a high quality of life for employees. The Agency will, consistent with the applicable requirements of the Occupational Safety and Health Act of 1970, Executive Order 12196, 29 C.F.R Part 1960, agency policies and other applicable safety and health codes, provide and maintain conditions and places of employment that are free from recognized hazards and unhealthful working conditions.

b. Nothing herein will prevent the Union from initiating additional negotiations to address safety, health, or wellness for issues not covered by this CBA.

c. The Agency shall prepare a recurring report, at least annually, on all safety awareness programs and the provisions and procedures for elimination of safety and health hazards.

d. The report shall pay particular attention to patterns of injuries and illnesses found in a given occupation, facility, or part of a facility with a goal of prevention and abatement.

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

Section 2—Agency and Department of Labor (DOL) Health and Safety Related Activities

a. The Agency will notify the Union of Agency and DOL meetings and allow the Union the opportunity to attend, virtually or in person, and participate on official time.

b. If the Union is not satisfied with the Agency's response to a reported hazardous working condition, the Union may ask the Agency to request an evaluation and/or inspection from an outside organization.

c. In accordance with 29 C.F.R. § 1960.59(a), the Agency will provide bargaining unit employees with occupational safety and health training required by the duties of their jobs, including both introductory and specialized courses and materials that will enable bargaining unit employees to function appropriately in ensuring safe and healthful working conditions and practices in the workplace, and enable them to effectively assist in conducting workplace safety and health inspections.

d. The Agency shall ensure bargaining unit employees have access to water, first aid, and safety and health equipment at or near each duty location.

e. Upon request, the Agency shall provide to the Union all incident or accident reports (subject to Privacy Act restrictions) and any recommended corrective actions.

f. Upon request, the Agency shall forward all environmental test reports to the Union and any recommended corrective actions.

Section 3—Personal Protective Equipment

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

b. The Agency will provide employees information and any training required by OSHA standards on PPE provided.

Section 4—Unsafe/Unhealthful Conditions

a. Any employee, group of employees, or Union representative of employees who believes that an unsafe or unhealthful working condition exists in any worksite, has the right to report such condition to any Agency supervisor, manager, executive, Collateral Duty Safety Officer, or the Union. An inspection of potentially serious and other conditions will be made in accordance with the Agency's Safety and Health Manual. All Agency determinations and actions on imminent danger reports will be put in writing to the reporting employee and the Union explaining the basis for the findings and actions within the timeframe established by applicable regulations.

b. When the Agency or other appropriate authority determines that a dangerous or potentially dangerous condition exists at a worksite, management will notify Bargaining Unit employees at that worksite and the Union as soon as practicable as to the precautionary measures to be implemented.

c. If there is an emergency situation in a worksite, the paramount concern is for the preservation of safety and health. Should it become necessary to evacuate an area, the Agency shall take precautions to ensure the safety and health of employees. Ordinarily, employees will not be readmitted to an evacuated area until it is determined in conjunction with whatever expert resources have been called in, depending on the circumstances, that there is no longer danger to the evacuated personnel.

d. An abatement plan will be prepared if the abatement of an unsafe or unhealthy working condition will not be possible within thirty (30) calendar days. Such plan shall contain a proposed timetable for the abatement and a summary of steps being taken in the interim

to protect employees from being injured as a result of the unsafe or unhealthy working conditions and provided to the Local PHMSA Vice-President.

e. If the abatement plan cannot be immediately implemented, the Agency shall inform affected employees of the interim measures that will be instituted for the protection of the employees. If the conditions cannot be immediately corrected, employees will be assigned work in a safe and healthy area, or will be excused without charge to leave until the condition is corrected.

Section 5—Work-Related Injuries and illnesses

Upon request, the Agency will provide employees with information regarding the appropriate forms, filing requirements, and timelines for Workers' Compensation claims.

Section 6—Personal Security

a. The Agency shall provide adequate security and protection to all employees and provide copies of all Security Bulletins and Security Alerts to bargaining unit employees.

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

c. The Agency shall report all incidents of violence in the workplace to the Union subject to the privacy rights of victims and perpetrators.

Section 7—Emergency Preparedness

a. Each post of duty for employees shall have an emergency preparedness plan that establishes procedures for safeguarding lives in the event of natural or man- made emergency.

b. The Agency shall make reasonable efforts to assure that each worksite has adequate personnel, including volunteer employees, available to administer cardio-pulmonary resuscitation (CPR) or have emergency services available. The Agency will provide CPR shields and masks for employees administering CPR. Training for CPR certification and/or recertification will be at no cost to employees.

c. The first concern when an employee is injured on the job is to make certain that the employee gets prompt emergency medical aid. Doubts over whether medical attention is necessary will be resolved in favor of arranging medical aid.

d. When it is necessary to assist an employee to a medical facility because of illness or

incapacitation, the Agency will arrange for transportation.

e. The Agency shall maintain adequate first aid supplies at each worksite. All employees will have reasonable access to these supplies.

f. The Agency shall ensure that there is an emergency notification process at worksite that allows immediate notification to employees of emergency situations.

Section 8—Indoor Air Quality

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

Section 9 — Renovation and Construction

Wherever management decides to alter the physical work site of employees represented by the Union, the Union will be notified in advance in accordance with the Mid-Term Bargaining Article of this CBA. In addition to the requirements negotiated in any mid-term agreements, the Agency shall:

a. When possible and cost effective, isolate areas of significant renovation, painting, carpet laying, etc., from occupied areas that are not under construction;

b. When possible and cost effective, perform this work during evenings and weekends;

c. Ensure that concentrations of contaminants are sufficiently diluted prior to occupancy and;

d. Supply adequate ventilation during and after completion of work to assist in dilution of contaminant levels.

Section 11—Wellness Program

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

Article 35
Equal Employment Opportunity

Section 1—Policy

The Agency and the Union affirm their commitment to equal employment opportunity (EEO) and the prohibition of discrimination on the bases of race, color, religion, sex, age, national origin, disability, genetic information, sexual orientation, or reprisal for opposing any practice made unlawful by Title VII of the Civil Rights Act, as amended, the Age Discrimination in Employment Act (ADEA), the Equal Pay Act, the Genetic Information Nondiscrimination Act (GINA), the Rehabilitation Act, and the standards of the Americans with Disabilities Act (ADA) as applicable to federal employees under any Act of congress that prohibit unlawful discrimination.

Section 2—Participation in EEO and Model EEO Program

The Union will partner with the Director of Civil Rights and examine employment policies, procedures and practices in order to identify actual problems, barriers, and "triggers" that may limit employment opportunities for employees and applicants for employment.

Section 3 — EEO Complaints

a. Allegations of discrimination may be filed under the EEO complaint process (29 C.F.R. Part 1614).

b. A "mixed case" complaint is a complaint of employment discrimination filed with the Agency EEO office based on race, color, religion, sex, national origin, disability, genetic information, or age related to or stemming from an action that is appealable to the MSPB.

c. A "mixed case" appeal is an appeal filed with MSPB alleging an appealable agency action was taken in part or in whole because of discrimination based on race, color, religion, sex, national origin, disability, genetic information or age.

d. A matter of discrimination may be appealed to the MSPB as a mixed-case appeal if the matter is otherwise appealable to the MSPB. If a mixed case is filed as an appeal to the MSPB or filed as a complaint to the EEOC, the case may not be grieved under the negotiated grievance procedure.

Section 4 – Alternative Dispute Resolution

Alternative dispute resolution is a process designed to assist parties in resolving differences in a less traditional dispute resolution mechanism (e.g., formal complaint process or court). ADR does not replace the more traditional dispute resolution mechanisms but provided an alternative. If an ADR process does not resolve the conflict, the parties still retain all rights to pursue more traditional approaches. In an effort to resolve workplace disputes at the lowest possible level prior to any formal process, the PHMSA and Union will encourage the use of ADR processes.

Any person in a dispute may contact the Center for Alternative Dispute Resolution at DOT, Human Resources, the Office of Civil Rights, or the Union to request assistance in resolving disputes.

Section 5—Reasonable Accommodations

As provided by the Rehabilitation Act of 1973, the Agency agrees to make reasonable accommodations for known physical or mental limitations of qualified employees with disabilities that will enable the employee to perform the essential functions of his or her position, unless the Agency can demonstrate the accommodation would impose an undue hardship on the operation of the Agency's program. Employees may request an accommodation, orally or in writing. The Agency will identify the appropriate management official with authority to engage in an interactive process to discuss reasonable accommodations options.

Section 6—Information and Notice to Union and Employees

a. Upon request, the Agency will provide the Union copies of regulations in the Agency's possession that describe the discrimination complaints process and statistical reports concerning discrimination complaints filed by Bargaining Unit employees.

b. Provision of any information under this Article does not impact any rights the Union may have under 5 U.S.C. § 7114 (b) or the Freedom of Information Act.

c. The Union will be provided information relating to the demographics of the workforce when requested to represent the bargaining unit employees in a potential or actual grievance. The Agency will also provide this information to the Union within fifteen (15) calendar days of receiving a written request from the Union.

d. Upon request, the Agency will provide the Union with copies of any reports and plans submitted concerning the Agency's implementation of the Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act).

e. The Union will be notified of, and provided with, the opportunity to be present in any formal discussion affecting the terms and conditions of employment during the processing of any formal EEO complaint as required by law, except as provided below. The Agency will notify the Union designee as far in advance of the formal discussion as possible under the circumstances and inform him or her of the nature of the original complaint. The Union representative will be acknowledged at the start of the formal discussion and will be given an opportunity to participate, which includes the opportunity to speak, comment, and make statements.

f. The union has the right to be present at the mediation or ADR of a formal complaint, unless the employee objects on the grounds that the Union's presence is in direct conflict with one of the employee's rights as a victim of discrimination under Title VII of the Civil Rights Act of 1964.

Article 36
Workers' Compensation

Section 1—Coverage

The Federal Employees' Compensation Act (FECA) provides workers compensation to employees who become disabled due to an employment-related disease or injury sustained in the performance of duty. Administered by the U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP), the applicable laws and regulations are set forth in 5 U.S.C. Chapter 81 and 20 C.F.R. Part 10.

Section 2—Employee Responsibility

Employees are responsible for promptly reporting job illnesses and injuries to their immediate supervisors or other appropriate management official.

Section 3—Supervisor Responsibility

a. When notice of a job illness or injury is received by the supervisor, the supervisor will:

   1. Provide employees with the appropriate CA form(s);

   2. Help employees complete the forms, as necessary;

   3. Ensure the completed forms are submitted to the Federal Aviation Administration, National OWCP Branch in a timely fashion; and

   4. Inform the Human Resources Division within twenty-four (24) hours that an injury has occurred.

b. At the time a CA form is received by the supervisor, the supervisor will complete the form, including the receipt of notice of injury, and give a copy to the employee.

c. The supervisor is responsible for obtaining any witness statements and for the proper codes required on the appropriate CA form, and should also submit any other information or evidence pertinent to the merits of this claim to the appropriate office within the Department of Labor.

Article 37
Employee Notices

Section 1—Representation Rights

a. In January of each year, the Agency will, in accordance with 5 U.S.C. § 7114 (a)(2)(B), notify employees of their rights to Union representation. The notice will contain the statutory reference and language as follows:

1. Bargaining unit employees are entitled to Union representation during any examination by a representative of the Agency in connection with an investigation if:

a) The employee reasonably believes that the examination may result in disciplinary action against him or her; and

b) The employee requests representation.

2. Included in the above notice will also be the following statement: "In accordance with 5 U.S.C. § 7114 (a)(2)(A), the Union is authorized to be present at any formal discussion between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment."

Section 2—Standards of Ethical Conduct

a. On an annual basis, the Agency will notify the Union and bargaining unit employees of the U.S. Government Standards of Ethical Conduct.

b. When changes are required to existing Standards of Ethical Conduct, the Union will be notified in accordance with the Mid-Term Bargaining Article of this CBA and the Statute.

Section 3—Department of Transportation Office of Inspector General (DOTOIG)

On an annual basis, the Agency will notify bargaining unit employees of their right to file a complaint with the DOTOIG when they have reason to believe there is fraud, waste and abuse.

Section 4—Frequency of Employee Orientation

Employee orientation training will be conducted on a recurring scheduled basis at least once every quarter, and all new employees will be required to attend.

Section 5—Union Participation in Employee Orientation

The Union will be provided official time to address bargaining unit employees for new employee orientation. If a bargaining unit employee is unable to attend a schedule orientation session, the Union will be afforded official time to meet with the employee as soon as practicable.

Article 38
Employee Assistance Program

Section 1—Policy

This Article will be administered in accordance with applicable Federal laws and regulations, including 5 C.F.R. Part 792 governing Federal Employees' Health and Counseling Programs. The Agency agrees to promote an Employee Assistance Program (EAP) that provides no-cost, short term, confidential counseling to assist employees with issues of a personal nature related to work and family. The program includes referral services for problems related to alcohol, drug abuse, personal/emotional, financial, marital, family, legal matters, and follow-up services to help an employee readjust to his or her job during and after treatment. No employee will be required to use an EAP service unless this requirement is agreed to in writing as part of a mutually agreed upon settlement of a work-related matter.

Section 2—Employee Assistance Program

a. The Agency will maintain an Employee Assistance Program (EAP) and make this service available to bargaining unit employees at no cost. The EAP will be staffed with professional counselors who will assist employees in addressing problems that have had an adverse effect on their job performance, reliability, and health.

b. Supervisors should offer the availability of the EAP to employees who are experiencing performance and conduct issues. However, supervisors will not attempt to diagnose employee problems; e.g., alcohol or drug abuse, depression, etc. The EAP can be important in preventing and intervening in workplace violence incidents; delivering critical incident stress debriefings; and providing assistance to management and employees during Agency restructuring or other major organizational transitions or developments.

c. The Agency will publicize information regarding the EAP on the agency's website and by email. The information will include, at a minimum, the telephone number, email address, location, and hours of operation.

Section 3—Voluntary Participation and Employee Responsibility

a. An employee will not be required to participate in nor be penalized for declining EAP services unless participation is required as part of a settlement agreement.

b. Prior to leaving the work place to meet with an EAP counselor, the employee must inform his or her supervisor and make appropriate arrangements for the absence. Employees who do not want their supervisors to know of their attendance must make arrangements for EAP appointments outside of duty hours or request leave.

Section 4—Access to EAP Services

a. The Agency may grant duty time to an employee to participate in the EAP, provided that the employee informs the supervisor of the appointment. The Agency may grant duty time to an employee to meet with an EAP counselor for up to six (6) sessions as determined by the EAP counselor.

b. Employees who are referred to community services for treatment will request leave in accordance with the Leave Articles established in this CBA.

Section 5—Confidentiality of the Program

a. The Parties recognize that all confidential information and records concerning an employee's counseling and treatment through the EAP will be maintained in accordance with The Privacy Act of 1974 (5 U.S.C. § 552a).

b. The Agency may not obtain or disclose information about the substance of the employee's involvement with the EAP without an employee's written consent.

c. Disclosure without consent is permissible only in a few instances, such as the following:

1. To medical personnel in a medical emergency;

2. In response to an order of a court of competent jurisdiction;

3. To comply with Executive Order 12564, "Drug Free Federal Workplace";

4. An EAP counselor is required by law to report incidents of suspected child abuse and neglect (in some states, elder and spouse abuse) to the appropriate state and local authorities; and

5. An EAP counselor may make a disclosure to appropriate individuals, such as law enforcement authorities and persons being threatened; if the employee has committed, or threatens to commit, a crime that would physically harm someone. This can be done only if the disclosure does not identify the employee as an alcoholic or drug abuser.

Section 6—Unacceptable Performance, Disciplinary and Adverse Actions

a. Any information obtained from the EAP with the employee's authorization may not serve as the basis for disciplinary or adverse actions. Disciplinary actions should be based on job behavior or performance problems, not progress in a counseling program. In evaluating an employee's work performance and job- related conduct, the supervisor may consider whether an employee referred to counseling is cooperating with a recommended plan of counseling.

b. After proposing a disciplinary or adverse action, the Agency has the discretion to consider placing the proposed action in abeyance for a period of not more than twelve (12) months while the employee undergoes treatment under terms and conditions agreed to by the employee, if the employee (i) notifies the Agency for the first time that he or she has a substance abuse problem that significantly contributed to the misconduct and (ii) is seeking the services of EAP and follow up treatment as necessary. This provision only applies to the first instance of substance abuse and does not apply if severe, egregious, or criminal misconduct is involved.

c. If a decision is made by the Agency to hold an action in abeyance and there are no further instances of related performance or conduct problems at the end of the specified period, the Agency will consider rescinding and closing the pending action. If the action is not rescinded or closed, the employee shall be notified in writing within thirty (30) calendar days and the reason(s) for not rescinding or closing the action shall be listed.

d. Should the employee violate any terms of the agreed-upon conditions or is involved in additional misconduct during the abeyance period, the proposed action will be processed in accordance with the procedures outlined in 5 C.F.R. Part 752 and this CBA.

e. Should an agreement be reached between the employee and the supervisor to hold a disciplinary or adverse action in abeyance, the employee will not be required to forfeit his or her statutory rights to appeal the Agency's decision to discipline should the employee fail to comply with the terms of the agreement. This provision does not apply to last chance agreements.

Article 39
Work Space Moves

Section 1—Purpose

The purpose of this Article is to outline a clear process for how work space will be assigned. The Parties agree that management will first determine the need for employee relocations to vacant work space, consistent with organizational needs and budgetary limitations, prior to considering any employee request to move into vacant work space. A bargaining unit employee in a confidential/sensitive position may be relocated to a vacant space regardless of rank, grade, or service computation date.

Section 2—Management Initiated Moves

An employee who is relocated to a new work space will receive at least a seven (7) calendar days' notice of the change.

Section 3—Employee Initiated Moves

When a work space assigned to a bargaining unit employee becomes vacant, another bargaining unit employee from the same organizational unit may request to move into that space. When the request is consistent with operational requirements and budgetary constraints, the request may be approved. When, more than one employee requests to move into the vacant space, the higher-graded employee will be given preference. Within the same grade level, the employee with earliest federal service computation date (retirement) will be given preference. If service computation dates are identical, a random lottery shall be used to break the tie with the employees and/or the union present. Requests for employees to exchange work locations are subject to the same constraints as individual moves to vacant space.

Article 40
Details

Section 1—Definition

A detail is a temporary assignment of an employee to a different position, or set of duties for a specified period, with the employee returning to his or her regular duties at the end of the detail. The rules and procedures applicable to details will be consistent with 5 U.S.C. § 3341 and 5 C.F.R. Part 300, Subpart C and this CBA. Both parties agree that the Agency may use details to meet Agency needs and/or for employee career development; and that all qualifications being equal, details will be assigned on a fair, equitable, and legal basis.

Section 2—Detail Requirements

a. A record of detail assignments will be created for details. The record shall be provided to the Union upon written request for which they have a particularized need.

b. Details will not be used to punish employees.

c. Details will be assigned on a fair and equitable basis among qualified employees.

d. The following will apply when assigning details for more than 30 calendar days on a non-competitive basis:

   1. The Agency will determine the qualifications of the position of detail, including any task-related qualifications for the work to be performed.

   2. Notices of details will be posted electronically Agency wide.

   3. Postings will normally be for at least seven (7) calendar days.

Section 3—Procedures

a. If an employee requests or volunteers for a detail or to take the place of another employee's assigned detail, but the supervisor does not approve, the supervisor will, upon request, provide the employee with a reason for the denial in writing.

b. The supervisor will provide reasonable advance notice to an employee selected for a detail, normally fourteen (14) calendar days in advance.

c. Employees shall be recognized for the work they perform. Therefore, details in excess of thirty (30) calendar days and detail extensions will be documented and maintained as a permanent record in the employee's e-OPF. In addition, employees may request amendment of their e-OPF for details of less than thirty (30) calendar days, in accordance

with OPM guidelines, as set forth at 5 C.F.R. Part 297.

d. Barring emergency circumstances, the Agency will make a reasonable effort to avoid placing Union officials on details that would prevent them from performing their representational functions.

e. When detailing any Union official/representative, the Agency will notify the Local Union President in writing at least five (5) business days in advance.

f. Employees may be detailed to positions at the same level, or to unclassified duties, in increments of one hundred twenty (120) calendar days or less.

g. The Agency agrees to bargain with the Union, upon request, when events necessitate details that may require an employee or group of employees to be away from their normal duty locations for extended periods of time and extended distances.

Section 4—Details to Lower and Higher Grades

a. The Agency does not normally detail employees to lower graded duties. However, if an employee is detailed to lower graded duties, there will be no loss of time-in-grade of the employee's permanent position, the detail will not be used as the basis for a lowered performance appraisal, and it will not have any adverse effect on the employee's eligibility for promotion opportunities.

b. If an employee is detailed to a higher graded position for more than thirty (30) calendar days, barring any legal or regulatory constraints, the Agency will promote the employee temporarily if they meet all qualifications. Details will not last longer than thirty (30) calendar days for employees who do not meet the qualifications. For a detail of more than one hundred twenty (120) calendar days to a higher grade or a position with known promotional potential greater than that of the employee's current position, the Agency will follow the Merit Promotion Article of this CBA.

Section 5—Temporary Duty Location

a. A temporary duty (TDY) location is a place away from an employee's official station, where the employee is authorized to travel.

b. TDY work assignments will be distributed based on Agency needs and employee qualification requirements. When qualifications are equal among eligible employees, TDY work will be assigned to employees on a fair and equitable basis. A record of TDY assignments will be maintained by the Agency and provided to the Union upon written request for which they have a particularized need.

c. If an employee requests or volunteers for a TDY or requests to take the place of another employee's assigned to a TDY, but the supervisor does not approve the request, the

supervisor will, upon request, provide the employee with a reason for the denial.

d. The Agency agrees to bargain with a Local Union, upon request, when events necessitate a TDY, which may require an employee or group of employees to be away from their normal duty locations for extended periods of time and extended distances.

e. Travel for TDY work assignments will be reimbursed according to the FTR.

Article 41
Reassignments

Section 1—General

a. Reassignment is the change of an employee from one position to another without promotion or change to a lower grade, level, or band. The regulation 5 C.F.R. Part 335 authorizes reassignments of federal employees. Because they are permanent, all reassignments will be documented in the employee's e-OPF. Requests for voluntary reassignments shall be given prompt and fair consideration.

b. Reassignments may be either management-directed (e.g., in order to avoid RIF actions or when an employee's skills are better utilized in another equivalent position) or voluntary (employee-initiated).

c. The employee will receive a Standard Form 50 from the Agency documenting the reassignment and a copy of the new position description for the new job within 30 calendar days of being reassigned.

Section 2—Management Directed Reassignment

a. When making a decision to reassign an employee, management will be guided by objective considerations in support of the Agency's mission, and/or to promote the efficiency of service.

b. Unless a reassignment is directed for a specific employee(s) for legitimate management considerations, all things being equal, seniority (Service Computation Date) will be the final deciding factor.

c. When an employee is reassigned to a different position, the employee will be given a reasonable period in which to become proficient. The Agency will provide the employee sufficient training to allow them to become proficient. If the employee is not proficient in his new position, the Agency will consider returning the employee to the previous position (if appropriate) or consider offering the employee another position for which they qualify.

d. An employee reassigned will be given written notification at least twenty-one (21) calendar days in advance.

e. For other than legitimate management considerations and mission necessity, the Agency will avoid subjecting Union officials to reassignments that would prevent them from performing their representational functions. The Agency will provide the Local President advanced written notice before reassigning a Union Officer, Official, or Steward.

f. Upon request, the Agency will bargain over negotiable aspects of the reassignment in accordance with Mid-Term Bargaining Article of this CBA.

g. The Agency will give reasonable consideration to documented reasons that a reassignment will cause an employee undue personal or professional hardship.

Section 3—Voluntary Reassignment

Employees may volunteer for reassignments or apply for advertised opportunities. All such requests are subject to management's right to assign employees work, and to determine the personnel by which Agency operations shall be conducted. Such requests will be considered by the Agency, and a good faith effort will be made to balance the needs of the employee with the Agency's program needs. Any voluntary changes will be processed in accordance with applicable laws, rules, regulations, and this CBA.

Section 4—Relocation Expenses

An employee affected by a management-directed or a voluntarily requested reassignment may be entitled to relocation expenses in accordance with the FTRs.

Article 42
Reorganizations

Section 1—Definition

A reorganization is the elimination, addition, or redistribution of responsibilities and/or reporting relationships within an organization, including the restructuring of agency components.

Section 2—Communications and Bargaining with the Union

The Agency will provide the Union, whose bargaining unit members may be impacted by a reorganization, with written notice containing sufficient information regarding the scope, impact, and intended implementation of the reorganization. Upon request, a briefing will be provided to the Union, expounding on the specifics/parameters of the proposed reorganization. The Union will be afforded the opportunity to bargain over the procedures and the appropriate arrangements for bargaining unit employees impacted by the reorganization. Consistent with 5 U.S.C. § 7114(b)(4), the Agency will provide the Union with the information necessary to conduct bargaining. Status quo will be maintained pending the completion of any bargaining unless the Agency can show the Union that status quo would adversely impact the functioning of the agency.

Article 43
Reduction-in-Force

Section 1—Introduction

When the Agency determines that a Reduction-in-Force (RIF) may be necessary, it must comply with RIF procedures when an employee is faced with separation or downgrading for a reason such as reorganization, contracting out (A-76), lack of work, shortage of funds, insufficient personnel ceiling, or exercise of certain reemployment or restoration rights. The RIF process will be administered in accordance with 5 U.S.C. Chapter 35 and 5 C.F.R. Part 351.

Section 2—Process

The Agency will:

a. Make efforts to accomplish a RIF through attrition prior to implementing RIF procedures; identify all continuing positions for which the Agency faces shortages of applicants; and, to the maximum extent feasible within budgetary limitations, train employees affected by the RIF who have potential for reassignment to those positions.

b. Keep outside hiring and internal promotions to the minimum necessary to maintain the efficient operation of the Agency. The Agency will release promotion eligible positions once it has been determined that these positions will not be impacted by RIF.

c. If feasible, request approval from OPM to use the Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Program (VSIP). Meet individually with employees eligible for VERA and/or VSIP, upon an employee's request.

d. In accordance with law, provide the Union with advance notification and an opportunity to bargain over the procedures for implementing the RIF and the appropriate arrangements for employees who are impacted by the RIF.

e. Provide the Union with all information that is necessary to satisfy its bargaining obligations and representational responsibilities consistent with 5 U.S.C. § 7114, such as:

1. Total number of positions to be affected;

2. Type of anticipated action (separation, downgrades, reassignments, etc.);

3. The competitive levels;

4. Title, grade, and series of all affected positions;

5. Proposed beginning date of the RIF;

6. Which employees received performance credit on their service computation dates;

7. The location of the retention records; and

8. Copies of the retention registers

f. Give employees and/or their representatives the opportunity to review retention registers for positions that the employees and/or their representatives reasonably believe may affect the employees' RIF action. The retention registers will list other employees who may be entitled to displace the affected employees as well as employees they may be entitled to displace.

g. To the maximum extent possible, guarantee the best offer of employment to all employees affected by implementation of the RIF procedures in a position as close to their current grade as possible.

h. Instruct supervisors to discuss training needs with the employees on a continuing basis and provide necessary and appropriate training when needed.

Section 3—Agency Notice to Employees

a. The Agency will inform all employees as fully and as quickly as possible of plans or requirements for an RIF, in accordance with applicable rules and regulations.

b. The Agency notice to affected employees will identify the regulations that govern the RIF and the kinds of assistance available.

c. Employees on detail will be released from their permanent positions (not their detailed positions) as a result of an RIF.

d. The Agency will provide a specific written notice to each employee affected by the RIF, if they are to be released from their competitive level, at least sixty (60) calendar days prior to the effective date. If faced with an unforeseeable situation (e.g. a natural disaster), the Agency may, with OPM approval, give the employee a specific written notice of less than sixty (60) calendar days, but at least thirty (30) calendar days prior to the effective date. At a minimum, the notice will include the following information:

1. The specific action being taken (e.g. separation; demotion; etc.);

2. The effective date of the action;

3. The employee's service computation date;

4. The employee's subgroup;

5. The employee's competitive area;

6. The employee's competitive level;

7. Why any lower standing employee is retained in their competitive level;

8. The employee's rights of appeal under the negotiated grievance procedures; and time limits for such appeals.

Article 44
Furloughs

Section 1—Definition

a. An administrative furlough is a planned event by the agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any budget situation other than a lapse in appropriations.

b. A shutdown furlough (also called an emergency furlough) occurs when there is a lapse in appropriations, and can occur at the beginning of a fiscal year, if no funds have been appropriated for that year, or upon expiration of a continuing resolution, if a new continuing resolution or appropriations law is not passed.

Section 2—Coverage

a. "Excepted (essential) employees" refers to employees who are funded through annual appropriations, but are excluded from a furlough because they are performing work that, by law, may continue to be performed during a lapse in appropriations or authorization. Excepted employees include employees who conduct emergency work involving the safety of human life or the protection of property, or certain other types of excepted work. Only the minimum number of employees necessary to carry out essential activities will be "excepted" and will not be furloughed.

b. Positions that provide direct support to excepted positions may also be deemed excepted if they are critical to performing the excepted activity. Determinations regarding status of excepted or non-excepted will be made on a position by position basis.

c. Employees who are funded through annual appropriations and not designated as excepted (non-essential) are barred from working during a shutdown except to conduct up to four (4) hours of activities necessary to execute an orderly suspension of Agency operations.

Section 3—Planning

a. For administrative furloughs the Agency will consider all reasonable alternatives to address budgetary constraints prior to placing employees on furlough.

b. The Agency will consider the Union's pre-decisional input through the Labor Management Forum; or the Union may request to negotiate as appropriate, regarding any further development of the Agency furlough plan.

c. Subject to mission requirements, employees may request continuous or non- continuous furlough days during an administrative furlough.

d. Upon request, the Agency will provide the Union with the basis for selecting particular employees as well as the reasons for the furlough.

e. For shutdown furloughs, consistent with congressional authorization and appropriation, the Agency will grant employees who suffer loss of pay through a furlough, retroactive pay and benefits that the employees would have received had they not been furloughed.

Section 4—Notification

a. The Agency agrees to notify the Union of an impending furlough as soon as practical after the Agency is informed. Subsequently, the Agency will identify to the Union the impacted organization(s) and the selection process used to determine which bargaining unit and non-bargaining unit employees will be affected.

b. In advance of a shutdown, the Agency will notify employees whether they are excepted or non-excepted employees.

c. The Agency will notify the Union and any employees who are necessary for an "orderly shutdown" of Agency activities (e.g., turning in equipment if required).

d. Employees on furlough will be advised that they are not permitted to conduct Agency work or volunteer to work in accordance with OPM guidelines.

e. The Agency will issue furlough notices to affected employees. Notices will normally be delivered within three (3) business days after the Agency is informed of the furlough/shutdown. Notices may be issued electronically to employees where possible; or any other delivery method deemed appropriate to ensure receipt. Notices will indicate the actions and steps taken to lessen the impact of the furlough on employees.

f. Employees will be notified that FEHB coverage will continue during a shutdown furlough. The employee's share of the FEHB premium will accumulate and be withheld from pay upon return to pay status. The employee can choose between paying the agency directly on a current basis while in a non-pay status or having the premiums accumulate and be withheld from his or her pay upon returning to duty.

g. Employees will be notified that Federal Employees' Group Life Insurance (FEGLI) coverage will continue for twelve (12) consecutive months in a non-pay status without cost to the employee.

Section 5—Return to Work

Furloughed employees will be notified when to return to work, normally not less than one workday before work is to resume. Employees may be provided a call-in number to determine the status of a furlough in the event they are not at home to receive such notification. Local news media may also be used to notify employees.

Article 45
Contracting Out

Section 1—General

a. The Agency retains the right to contract out work in accordance with 5 U.S.C. §7106(a)(2)(b). The term "contracting out" refers to a decision or act by the Agency that results in the transfer of functions from performance by federal employees to performance by a private contractor, such as when mandated by OMB Circular A-76 Revised, dated May 29, 2003 (A-76). The decision by the Agency to contract out is not subject to the negotiated grievance procedure.

b. The Union retains the right to bargain over additional procedures and arrangements for adversely affected bargaining unit employees regarding specific decisions by the Agency to contract out the work of bargaining unit employees as they occur.

If the Union chooses to bargain, Agency implementation will be held in abeyance pending the completion of bargaining, including the resolution of any impasse disputes.

Section 2—Notification of Contracting Out

a. The Agency agrees to notify the Union, as required by law or regulation and this CBA, of its decision to conduct a cost comparison study under OMB Circular A-76 that may impact bargaining unit employees.

b. Management will provide the Union with an opportunity to be present during any formal meetings or discussions with bargaining unit employees concerning the contracting out of work affecting bargaining unit employees, throughout all stages of the process.

c. The Agency will furnish to the Union information concerning the contracting out study, provided the information is not restricted by law, rule, or regulation.

d. During the study, management will solicit and consider the affected Local Union's recommendations concerning contracting out to include information such as the most efficient organization (MEO) and the performance work statement (PWS) processes of A-76 as they pertain to bargaining unit employees.

e. The Agency will provide the Union with copies of all notifications sent to Congress regarding contracting out activities and/or studies that pertain to bargaining unit employees at the same time these notices are provided to Congress, provided the information is not restricted by law, rule, or regulation.

Section 3—Adverse Impact

a. If the Agency determines that work will be contracted out and that bargaining unit employees will be adversely affected, the Agency will notify the Union, as appropriate. The notification shall be thirty (30) calendar days prior to any action.

b. Upon request, the Agency will meet and negotiate, as permitted by law, rule, or regulation, concerning the procedures to be followed in implementing the decision to contract out work and appropriate arrangements for bargaining unit employees who are adversely affected.

c. The Agency agrees to provide copies of relevant information used in the contracting out process, provided the information is not restricted by law, rule, regulation or other directive or instructions.

d. The Agency agrees to follow RIF procedures when contracting out results in a release of any employee in the bargaining unit.

Article 46
Retirement

Section 1—Purpose

This Article shall be administered in accordance with Title 5, C.F.R. Part 831 and this CBA. The purpose of this Article is to clarify certain policies covering retirement for all employees in accordance with applicable law and regulation.

Section 2—Retirement

a. Retirement Planning: Retirement planning may include pre-retirement training, seminars, webinars, OPM web site references, and retirement counseling. Bargaining unit employees will be allowed to participate in retirement planning during duty time subject to workload requirements. Upon request, the Agency will assist employees in identifying individual retirement planning information. Subject to budgetary limitations, bargaining unit employees may attend in-class retirement courses during duty time subject to workload requirements. Management will have valid mission related reasoning for denying any bargaining unit employee's request and shall, upon request, provide that reasoning to the bargaining unit employee in writing at the time of the denial.

b. Voluntary or Involuntary Separation: The Agency will provide employees who separate voluntarily or involuntarily (except by retirement) with information regarding disability retirement, discontinued service annuity, and deferred annuity as provided by law and OPM regulations (5 C.F.R. Part 831 and 5 C.F.R. Part842)

c. Involuntary Separation: Employees who are involuntarily separated as a result of an inability to perform their assigned duties or misconduct that can be attributed to a disabling condition will be notified by the Agency of theright to file for disability retirement within one (1) year after the date of separation.

d. An employee may withdraw a retirement application at any time prior to its effective date, provided the withdrawal is communicated to the Agency in writing and is received by the Agency prior to its having made a commitment to fill the position of the retiring employee, or unless the employee has committed to retire at a date certain pursuant to a settlement agreement.

Section 3—Thrift Savings Plan

The Agency will provide information relating to the Thrift Savings Plan (TSP) during new employee orientation sessions. Additional information concerning investing in TSP will be made available on the TSP and/or Agency web site.

Article 47
Duration

Section 1—Duration

This CBA shall remain in full force and effect for three (3) years from its effective date. This CBA shall automatically renew itself from year to year thereafter.

Section 2—Renegotiation

a. If either Party desires to renegotiate any terms of this CBA, it will furnish written notice to the other Party, identifying the Articles that it wishes to change. The notice must be provided no earlier than one hundred and twenty (120) calendar days prior to the expiration of the agreement.

b. In the event such notice is given by either Party, the Parties will begin negotiating ground rules for the new negotiations within sixty (60) calendar days from the date of receipt of notice of the proposed changes, unless otherwise agreed.

Section 3—Reopener

Either Party may propose negotiations during the term of this CBA to reopen, amend, or modify this CBA, but such negotiations may be conducted only by mutual consent of the Parties. Such negotiations shall be conducted in accordance with Mid-Term Bargaining Article.

Section 4—Amendments and Modifications

This CBA may only be amended, modified, or renegotiated in accordance with the provisions of this CBA.