

**COLLECTIVE BARGAINING AGREEMENT
BETWEEN THE
MSPB PROFESSIONAL ASSOCIATION AND MSPB**

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PREAMBLE

§ 1 The Congress finds that-

A. Experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them-

(1) safeguards the public interest,

(2) contributes to the effective conduct of public business, and

(3) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

B. The public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government. Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

§ 2 This Agreement is made and entered into by and between the Merit Systems Protection Board, hereinafter referred to as the "Agency" or "Management", and the Merit Systems Protection Board Professional Association, hereinafter referred to as the "Association." It is the purpose of this Agreement to prescribe certain rights and obligations of the employees of the agency and to establish procedures which are designed to meet the special requirements and needs of the agency. The provisions of this Agreement shall be interpreted in a manner consistent with the requirements of an effective and efficient Government, with due regard to maintaining a professional and positive relationship between Management, its employees, and the Association.

ARTICLE 1

EXCLUSIVE RECOGNITION AND COVERAGE OF THE AGREEMENT

§ 1.1 Management recognizes the Association as the exclusive representative, within the meaning of 5 U.S.C. § 7112, of all professional employees of the Merit Systems Protection Board in the classification series designation of GS-905, nationwide, in the Office of General Counsel, the Office of Appeals Counsel, and the Regional Offices, excluding all other professional employees, nonprofessional employees, management officials, supervisors, and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7).

§ 1.2 This Agreement is entered into under the authority granted in Title VII of the Civil Service Reform Act of 1978 and the Certification of Representative Case No. 3-RO-103, issued June 7, 1983, by the Federal Labor Relations Authority.

ARTICLE 2

GOVERNING AUTHORITY

§ 2.1 In the administration of this Agreement, the parties are governed by:

- A. existing and future Federal law;
- B. existing Government-wide regulations;
- C. future Government-wide regulations implementing 5 U.S.C. § 2302; and
- D. existing and future interpretations by competent authority of the above.

§ 2.2 Where discretionary Agency policy conflicts with this Agreement, the latter shall govern.

§ 2.3 "Existing" authority is that in effect on or before the effective date of this Agreement. "Future" authority is that taking effect following the effective date of this Agreement.

§ 2.4 "Government-wide regulations" include those official declarations of policy, rules, and regulations which are:

- A. generally applicable to the Federal civilian work force;
- B. promulgated pursuant to a statutory grant of authority to administer; and
- C. binding on the agencies covered, but does not include mere guidance or opinion.

§ 2.5 In the event a bargainable change results from the application of § 2.1 above, the Association will be notified in accordance with Article 6, Negotiations.

§ 2.6 Nothing in this Agreement shall be construed or enforced as independent contractual limitation on the exercise of reserved management rights (as defined in relevant authority extant at the time of the exercise of such right), unless such limitation constitutes an appropriate arrangement under 5 U.S.C. § 7106(b)(3) which does not excessively interfere with management's rights.

ARTICLE 3

EMPLOYEE RIGHTS

§ 3.1 Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under 5 U.S.C. Chapter 71, such right includes the right:

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

B. to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under 5 U.S.C. Chapter 71.

§ 3.2 Except as provided by law, in all terms and conditions of unit employment, Management will act without regard to political affiliation or belief, sexual preference, marital status, or any other arbitrary factor.

§ 3.3 Employee earnings will be distributed at the proper time and in the proper amount. Earnings and leave statements will be distributed within a reasonable period thereafter.

§ 3.4 Employees will not be required or coerced to donate their time or money to activities, meetings, or undertakings unrelated to official business. In accordance with 5 C.F.R. § 950.107, the following activities are not permitted in Federal fund-raising campaigns:

A. supervisory solicitation of employees supervised;

B. setting 100% participation goals;

C. providing and using contributor lists for purposes other than the routine collection and forwarding of contributions and installment pledges;

D. establishing personal dollar goals and quotas; and

E. developing and using lists of noncontributors.

§ 3.5 An employee directed by Management to join a professional organization will be reimbursed in accordance with applicable legal authority. This shall not apply to expenses incurred in meeting qualification standards established by OPM.

§ 3.6 Insofar as the Agency' 6 operation and policy is a matter of public interest or concern, employees have the right to comment without fear of restraint or retaliation.

§ 3.7 The outcome of a civil action will not be used as a basis of a disciplinary action unless a demonstrated nexus exists with the efficiency of the service.

§ 3.8 Absent a grant of use immunity from criminal prosecution, employees may remain silent (and decline a polygraphic examination) during the course of an investigation when the employees invoke their constitutional right against self-incrimination based on a reasonable belief that their statements may be used against them in a criminal proceeding.

§ 3.9 This Agreement shall not be construed or applied to impair or diminish an employee's statutory or regulatory rights.

§ 3.10 Nothing in this Agreement shall require an employee to become a member of or to remain a member of the Association, or to pay money to the Association except pursuant to a voluntary authorization. Dues withholding shall be in accordance with Article 40.

§ 3.11 Management will respect the statutory and contractual rights of employees by not unlawfully or improperly interfering with, restraining, or coercing employees in the exercise of activity protected by statute or this Agreement.

ARTICLE 4

MANAGEMENT RIGHTS

§ 4.1 Nothing in this Agreement shall affect the authority of Management, subject to § 4.2:

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

B. in accordance with applicable laws,

(1) to hire, assign, direct, lay off, 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's mission during emergencies.

§ 4.2 Nothing in this section or § 4.1 above, shall preclude Management and the Association from negotiating:

A. at the election of Management, 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 will observe in exercising any authority under this Article; or

C. appropriate arrangements for employees adversely affected by the exercise of any authority under this Article by such Management officials.

ARTICLE 5

ASSOCIATION RIGHTS

§ 5.1 The Association is entitled to act for and negotiate collective bargaining agreements covering all employees in the unit, and to designate its representatives for any such purpose.

§ 5.2 Association Right to be Present

A. Formal Discussions

(1) The Association shall be provided the opportunity to be represented at any formal discussion between one or more employees it represents and one or more representatives of Management concerning any grievance or any personnel policy or practice or other general condition of employment.

(2) The right to an opportunity to be present at a formal discussion can be waived only by the Association.

B. Investigatory Examinations

(1) A representative of the Association shall be given the opportunity to be represented at any examination of an employee in the unit by a representative of Management in connection with an investigation if-

(a) the employee reasonably believes that the examination may result in disciplinary action against the employee (based on misconduct or unacceptable performance), and

(b) the employee requests representation.

(2) Management shall annually inform employees of their rights in this respect.

(3) In the event Association representation is requested, Management may cancel or defer the investigative interview or request the employee to waive her/his request for Association representation, so long as the waiver is given voluntarily.

C. This section shall not apply to counseling sessions which have no investigatory nature and where the employee does not reasonably believe that the examination may result in disciplinary action.

§ 5.3 Management will furnish to the Association:

A. the biweekly ceiling reports showing accessions, separations, reassignments, and details of unit employees. A copy will also be provided to the regional chapter representatives;

B. quarterly data on promotions of unit employees;

C. by October 15 of each year, and as of the end of the full pay period nearest the end of the fiscal year, a list of all unit employees by name, title, grade and step; and

D. the Agency's final budget upon its formal publication.

§ 5.4 Upon request, Management will furnish the Association, to the extent not prohibited by law, data-

A. which is normally maintained by Management in the regular course of business; and

B. which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

C. which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

§ 5.5 All Agency orders, notices, and manuals under the Agency's formal issuance system which pertain to general terms and conditions of employment of unit employees will be provided the Association and its regional chapter representatives upon publication. Federal Register publications affecting working conditions of unit employees will be furnished the Association prior to publication in the Federal Register.

§ 5.6 Management will consider Association proposals to:

A. make more effective use of allotted office space, or

B. seek additional office space. A response will be provided within fifteen days.

§ 5.7 Management will notify the Association of any formal study directly related to unit conditions of work unless Management determines that such notification would adversely affect internal security or otherwise undermine the purpose of the study. The notice will identify the area to be studied. Such notice need not include information about the considerations leading to the conclusion that the study is necessary or appropriate, nor shall it otherwise enable the Association to participate in Management's decision-making - process.

ARTICLE 6

NEGOTIATIONS

§ 6.1 Scope of Negotiations

A. Management rights, described at 5 U.S.C. § 7106, shall not preclude Management and the Association from negotiating-

(1) at the election of Management, 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;

(2) procedures which Management will observe in exercising any authority under 5 U.S.C. § 7106; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under 5 U.S.C. § 7106 by the Agency's management officials.

B. The Association may also negotiate the exercise of that managerial authority which is not reserved to management under 5 U.S.C. § 7106 when such exercise will have a reasonably foreseeable impact on unit conditions of work.

§ 6.2 Good Faith Negotiations

The duty to negotiate in good faith shall include the obligation-

A. to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

B. to be represented at negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

C. to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

D. to furnish data to the Association in accordance with Article 5.4; and

E. if agreement is reached, to execute upon the request of any party to the negotiations a written document embodying the agreed terms, and to take such steps as are

necessary to implement such agreement.

§ 6.3 Association Officials for Service of Notices

A. The following officials, or their designees, are designated by the Association for service of Management notices:

(1) Chapter Representatives - notices concerning only the particular office for which the chapter representative has been duly designated;

(2) Association Designated Agent - all other notices.

B. When a chapter representative (or designee) is unavailable for service of notice, notice may be to the Association Designated Agent (or designee).

C. Notice to the Association is effective when served on that individual last identified to Management, in writing, as the Association's representative.

D. The Association will inform Management in writing of its current representatives and any changes thereto.

§ 6.4 Notice of a Bargainable Change

A. Notice to the Association of a bargainable change shall be:

- (1) in advance, unless impracticable to do so; and
- (2) reasonably specific.

B. Upon request, Management will describe the change and state the basis for proposing it.

§ 6.5 Request to Bargain Association requests for bargaining shall be:

A. to the Management official from whom notice was received, unless otherwise specified (if that official is unavailable, then to the General Counsel or designee); and

B. made promptly following notice to the Association, but not later than two work days from the date of actual notice. This will not preclude a request to extend the time for response when that request is made within two work days.

§ 6.6 Bargaining Proposals Association bargaining proposals shall:

A. be in writing;

B. be made to the Management official from whom notice was received, unless another official has been designated (if that official is unavailable, then to the General Counsel or designee);

C. state the specific proposal(s) for negotiation, together with any ground rule proposals permitted by this Article;

D. be submitted within a reasonable period of actual notice to the Association; and

E. state the identity of the Association bargaining representatives(s).

§ 6.7 Groundrules for Bargaining

A. The duty to bargain shall extend only to negotiable proposals.

B. At least five workdays prior to negotiations, Management will inform the Association of its bargaining representative(s).

C. The parties normally shall commence bargaining within ten workdays of receipt of the Association's written proposals.

D. Reasonable advance notice of changes in the number of a party's designated representatives shall be given.

E. Any Association representative, who is also an employee of the Agency, negotiating a collective bargaining agreement pursuant to this Agreement, shall be authorized official time for such purpose, including attendance at mediation and impasse meetings, during the time the

employee would otherwise be in a duty status. The number of employees for whom official time is authorized under this Agreement shall not exceed the number of individuals designated as representing Management for such purposes, provided, however, that the Association shall be entitled to not less than two employee representatives on official time for matters affecting headquarters offices or two or more regional offices. Any additional Association representatives, whether on official time or not, shall be by mutual consent. Pursuant to FLRA case law, the representatives of each side shall be regarded and treated as equals for bargaining purposes.

F. Formal recordings shall only be by mutual consent.

G. Caucuses shall be reasonable in frequency and duration.

H. Changes affecting one office will be bargained at or near that office location. Changes affecting two or more offices will be bargained at one of the affected offices or at headquarters, as determined by the parties.

I. Management shall provide the meeting space.

J. Reasonable support services will be provided to the Association.

K. Each party's representatives shall be authorized to enter into a binding agreement, subject to the authority described at Article 2.

L. Language proposed for agreement shall not be considered agreed to unless and until initialed by the parties' designated representative(s). Agreement on any particular language is contingent on agreement on all negotiable issues.

M. Any agreement will be reduced to writing upon either party's request, executed by the parties, and implemented.

N. Any agreement shall be subject to review by the Agency head or designee for conformance with the authority described at Article 2, Governing Authority, within thirty days of execution. If not approved or disapproved within such period, it shall take effect and be binding on the parties, subject to the authority described at Article 2.

O. The Association shall inform Management, at or before service of the Association's proposals, of any intent to seek ratification. Any ratification shall be conducted promptly.

P. Any agreement pursuant to this Article shall be effective for a period not longer than the duration of this Agreement.

Q. Disputes concerning the interpretation or application of an agreement reached pursuant to this Article will be processed under the dispute resolution procedures described in this Agreement unless agreed otherwise by the parties.

R. Travel and per diem shall be paid in accordance with Article 9.8.

S. Any further ground rules shall be negotiated only by mutual consent.

§ 6.8 Implementation of Changes

Negotiable changes may not be implemented prior to reaching agreement, except as follows:

A. Mandated changes: Changes mandated by the authority described at Article 2, Governing Authority, shall be implemented in accordance with such mandate to the extent Management is essentially without discretion as to the terms or timing of such implementation.

B. Exigencies: Changes which, due to the exigent nature of the circumstances, cannot be delayed, shall be implemented to the extent required in effectively responding to such exigency, consistent with the necessary functioning of the Agency.

C. Procedural default: Changes may be implemented for which notice and an opportunity to bargain have been provided, and as to which the Association has not requested or pursued, as appropriate,

(1) negotiations in accordance with this Article; or

(2) mediation/impatte resolution processes in accordance with law and regulation upon such default.

D. De Minimus changes: Changes in the terms and conditions of employment which are de minimus in nature.

§ 6.9 Supplementals

A. Issues appropriate for supplemental negotiations are limited to matters unique to the Regional Offices generally, or to a particular office, and not inconsistent with this Agreement.

B. The parties will continue to make a good faith effort to resolve, informally, local issues at the local level, without prejudice to the right to elevate any bargaining to the national level. Any resolution must be consistent with this Agreement.

C. Management will not be required to engage in more than one set of formal supplemental negotiations at any time.

D. Except as provided herein, the procedures for formal supplemental negotiations are as described at § 6.8, above.

§ 6.10 Midterm Bargaining

The Association may exercise its statutory right to bargain during the term of this Agreement on negotiable proposals concerning matters which are not contained in this agreement unless the Association has clearly and unmistakably waived its right to bargain about the subject matter involved.

ARTICLE 7

USE OF OFFICIAL FACILITIES AND SERVICES

§ 7.1 Access to Space

A. Management will provide the Association, on an as needed basis, access to the Agency's space for representational duties in accordance with the existing scheduling practice.

B. Management will attempt to provide the Association reasonable access to its space during non-duty hours, if available, at no cost to the Agency, to conduct Association business. The official business of the Agency shall take precedence over any such request. Scheduling shall follow the existing Management practice.

§ 7.2 Access to Services

A. Photocopiers Access to photocopiers will be provided the Association for necessary representational activity only when such equipment is not otherwise needed for official business. The Association will, at the time of each use, submit a signed, written statement to the designated Management official showing the number of originals and copies thereof.

B. Internal Mail System The Association may receive its mail through Management's address and internal mail system. Management will endeavor to respect the confidentiality of mail addressed or forwarded to the Association or its representatives.

C. Bulletin Boards A bulletin board or bulletin board space shall be made available in each office for the display of Association material which is not malicious, libelous, or scurrilous.

D. Typing

(1) Management may, at its discretion, provide the Association with typing services. The provision of such services shall not constitute a past practice or entitlement for any purpose.

(2) Management shall provide access to available word processors for representational activity.

E. Telephones

(1) The Association shall have access to FTS lines for representational activity. Operator-assisted calls are not permitted except upon the written consent of Management.

(2) The Association's officers and chapter representatives, as provided to the Office of Administration, shall be listed in Management's telephone directory by name, title, telephone number, and office location.

F. File Cabinets Upon request, Management will make available at least two lockable file drawers for each chapter representative and national officer. A four drawer cabinet shall be made available to the Association.

G. Copies of Agreement A printed copy of this Agreement will be furnished to bargaining unit members and to new unit employees during orientation. Twenty-five additional copies will be provided the Association.

ARTICLE 8

ORIENTATION OF NEW EMPLOYEES

§ 8.1 During orientation of new bargaining unit employees, Management will advise them that they have the right to form, join, or assist any labor organization freely and without fear of penalty or reprisal, or to refrain from any such activity, and that they are protected in the exercise of such right. The Association Chapter Representative shall be allowed to make a presentation during the orientation.

§ 8.2 A copy of this Agreement will be provided to new employees during orientation, along with any other material provided by the Association.

ARTICLE 9

OFFICIAL TIME

§ 9.1 "Official time" means time away from assigned duties, without loss of pay or benefits, during regular duty hours when the employee would otherwise be in a duty or paid leave status.

§ 9.2 Permissible Uses of Official Time

A. Pursuant to 5 U.S.C. Chapter 71, official time is appropriate for the following activities:

- (1) preparation for, and negotiation of, collective bargaining agreements as described at Article 6;
- (2) requesting, considering, and responding to information as described at Article 5;
- (3) representing employees or the Association, or appearing as a witness, in connection with any:
 - (a) investigation or prosecution of an actual or potential grievance;
 - (b) appeal;
 - (c) arbitration;
 - (d) formal discussion;
 - (e) investigative interview or
 - (f) Management-Association meeting;

- (4) labor-management relations training;
- (5) any other Chapter 71-related purpose approved by Management; and
- (6) travel in connection with the above.

B. Any activities performed by any employee relating to the internal business of the Association (including the solicitation of membership, election of Association officials, and collection of dues) shall be performed during the time the employee is in a non-duty status.

§ 9.3 Amount of Official Time -

An employee, individually or as an Association representative, shall be granted official time in any amount Management and the Association agree to be reasonable, necessary, and in the public interest. The amount may be in the form of a bank of hours determined on an ad hoc basis.

§ 9.4 Procedures

- A. Requests for official time shall be made in the same manner as requests for approved leave.
- B. Suspected abuses of procedures for requesting and using official time shall be handled in the same manner as suspected abuses of the procedures for requesting and using approved leave.
- C. The use of official time shall be recorded in a manner similar to the recording of approved leave.
- D. The Association shall not be required to divulge the names of potential grievants as a condition for approval of official time.
- E. Approved official time shall be scheduled as requested unless undue interference with workload requirements would result. If there is undue interference, the time shall be scheduled immediately thereafter with, upon request, an equal extension of any related time limit established by this Agreement.

§ 9.5 To avoid the time and expense of litigating official time disputes, Management may, without setting binding precedent, resolve the dispute by granting all or part of the disputed amount with reference to this Article.

§ 9.6 In accordance with the practice negotiated by the respective chapters, use of official time shall result in an adjustment by Management to an employee's assignments or production rate in a manner similar to such adjustments for other appropriate purposes (e.g., details or extended approved leave).

§ 9.7 The Association shall reasonably cooperate in maintaining and furnishing records of official time and services, including use of Agency equipment and supplies, relating to the implementation or administration of this Agreement. Advance notice will be provided of the records to be maintained and furnished.

§ 9.8 Travel and Per Diem Payments

A. Reasonable and necessary travel and per diem payments will be authorized by Management when in the interests of the Government and in accordance with Board Order No. 1345. _.

B. Matters appropriate for travel and per diem payments are limited to:

(1) attendance at negotiated grievance proceedings at step 2 and above.

(2) attendance at arbitration proceedings when such presence is required as a necessary witness or as the designated representative.

(3) attendance at up to two meetings of committees established by this Agreement provided that the travel does not exceed the aggregate cost of two round trips from any Agency office and a total of four days in travel status.

(4) attendance at negotiations for the number of Association representatives equal to the number of Management representatives on travel and per diem but not less than one.

C. The Association will make reasonable efforts to economize on the incurring of travel and per diem costs.

D. Travel and per diem payments are limited to Agency employees in accordance with Agency procedures.

E. Payments of travel and per diem costs for Association negotiators shall be shared equally by the parties after the first five days of such negotiations. These provisions do not apply to any renegotiation of this Agreement. These provisions apply to any mid-term bargaining permitted by this Agreement.

ARTICLE 10

MERIT SYSTEM PRINCIPLES AND PROHIBITED PERSONNEL PRACTICES

§ 10.1 The Agency's personnel management actions should be implemented in accordance with the Merit System Principles contained at 5 U.S.C. § 2301(b).

§ 10.2 Management will refrain from any of the practices prohibited at 5 U.S.C. § 2302(b).

ARTICLE 11

UNFAIR LABOR PRACTICES

§ 11.1 Unfair labor practice

A. For the purpose of this Article, it shall be an unfair labor practice for the Agency-

- (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this Article;
- (2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
- (3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the service and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;
- (4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this Article;
- (5) to refuse to consult or negotiate in good faith with a labor organization as required by 5 U.S.C. Chapter 71;
- (6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by 5 U.S.C. Chapter 71;
- (7) to enforce any rule or regulation (other than a rule or regulation implementing 5 U.S.C § 2302) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or
- (8) to otherwise fail or refuse to comply with any provision of 5 U.S.C. Chapter 71.

B. For the purpose of this Article, it shall be an unfair labor practice for the Association-

- (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under 5 U.S.C. Chapter 71 and this Agreement;
- (2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under 5 U.S.C. Chapter 71;
- (3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;
- (4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;
- (5) to refuse to consult or negotiate in good faith with the Agency as required by 5 U.S.C. Chapter 71 and this Agreement;
- (6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by 5 U.S.C. Chapter 71;

(7) (a) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

(b) to condone any activity described in subparagraph (a) of this paragraph by failing to take action to prevent or stop such activity; or

(8) to otherwise fail or refuse to comply with any provision of 5 U.S.C. Chapter 71 and this Agreement.

Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere with an agency's operations being considered an unfair labor practice.

C. For the purpose of this Article it shall be an unfair labor practice for the Association to deny membership to any employee in the appropriate unit represented by the Association except for failure-

(1) to meet reasonable occupational standards uniformly required for admission, or

(2) to tender dues uniformly required as a condition of acquiring and retaining membership. This subsection does not preclude the Association from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of 5 U.S.C. Chapter 71.

D. Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under 5 U.S.C. § 7116. Except for matters wherein, under 5 U.S.C. §§ 7121 (e) and (f), an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

E. The expression of any personal view, argument, opinion or the making of any statement which-

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election,

(2) corrects the record with respect to any false or misleading statement made by any person, or

(3) informs employees of the Government's policy relating to labor-management relations and representation, shall not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions, constitute an unfair labor practice under any provision of this Article or 5 U.S.C. Chapter 71.

§ 11.2 Notice of intent to file a charge alleging an unfair labor practice may be made in writing thirty days prior to the filing of any such charge.

§ 11.3 In processing an unfair labor practice charge, the initiator will draft the charge which will include the specific matter or action which is considered the unfair labor practice, the

corrective action desired, and the name, address, and telephone number of the Association or Management representative. A decision may be provided in writing within fifteen days after receipt of the charge.

§ 11.4 The procedures in § 11.2 and 11.3 above are voluntary and will not preclude the filing of an unfair labor practice charge at any time.

ARTICLE 12

EMPLOYEE ASSISTANCE PROGRAM (EAP)

§ 12.1 Management will advise employees as to what assistance is available to employees experiencing apparent problems in the areas of alcoholism, drug abuse, or emotional distress. Counseling for such problems will be encouraged.

§ 12.2 Brief absences for EAP counseling will be allowed without charge to leave.

§ 12.3 Counseling records and information concerning employees under this program will be kept confidential in accordance with applicable laws and regulations.

§ 12.4 Management may favorably consider participation in a voluntary rehabilitation program in proposing or taking discipline or performance-based action.

ARTICLE 13

EQUAL EMPLOYMENT OPPORTUNITY

§ 13.1 The parties shall, in their respective policies and practices, provide equality of opportunity for all employees without regard to race, color, creed, religion, sex, national origin, age, or handicapping condition.

§ 13.2 Management shall review any employment practice or policy which has an unlawful disproportionate impact on any group identified in § 13.1 with a view toward its elimination.

§ 13.3 Sexual harassment adversely affects all employees. Sexual harassment includes the following unwanted actions:

- A. a request for sexual favors;
- B. continued requests for social engagements once an employee has stated that he/she is not interested in such non-work hour contacts;
- C. physical touches other than those appropriate to the work place;
- D. comments on the employee's physical attributes; and
- E. other actions specified in applicable EEOC guidelines.

§ 13.4 Self-identified qualified handicapped employees will be reasonably accommodated in a manner not inconsistent with law.

§ 13.5 The EEO Affirmative Action Program Management's EEO Affirmative Action Program shall be designed to promote equal employment opportunity in Agency personnel policy and practice impacting bargaining unit members. The program shall include but not be limited to:

- A. determination, if possible, of underrepresentation of minorities, women, aged, and handicapped;
- B. analysis of employment barriers for minorities, women, aged, and handicapped;
- C. affirmative action goals and timetables;
- D. identification and analysis of applicant sources to insure adequate representation of the above;
- E. development of staffing and recruitment strategies to insure adequate representation of the above; and
- F. plans to prevent sexual harassment in the workplace.

§ 13.6 Information, Data, and Reports

A. Management shall provide employees access to written information describing the discrimination complaint process.

B. Management shall furnish the Association that statistical data which is routinely maintained including, but not limited to, the number of complaints filed. Upon request of the Association, together with an appropriate showing of relevance and necessity, Management shall furnish to the Association, to the extent not prohibited by law, data-

(1) which is normally maintained by Management in the regular course of business;

(2) which is reasonably available and necessary for the Association to discharge its representational duties under this Article; and

(3) which does not constitute guidance, advice, counsel, or training for management officials or supervisors relating to collective bargaining.

C. Management shall provide the Association with a copy of its Affirmative Action Program plans and reports five work days prior to furnishing them to the EEOC or OPM, including statistical data as provided therein.

D. The names, telephone numbers, and pictures of designated EEO counselors will be posted in the Agency's Headquarters Office and in each Regional Office.

§ 13.7 EEO Counselors

A. When appointing EEO counselors, Management will give fair consideration to nominations from the Association.

B. Proper training, as determined by Management, will be provided to designated EEO counselors consistent with appropriate EEOC guidance.

C. Management will assure that EEO counselors are available and accessible to employees who may have a discrimination complaint.

D. Employees shall choose from available designated Agency EEO counselors to pursue their complaints.

E. The Association representative, designated in writing by the EEO complainant, will have the same access to information as the complainant.

§ 13.8 Special Emphasis Program Managers When appointing special emphasis program managers, Management will give fair consideration to nominations from the Association.

§ 13.9 Complaints

A. Any employee who wishes to file or has filed an EEO complaint shall be free from coercion, interference, and reprisal.

B. EEO counselors will fully advise employees who seek their assistance of the procedures involved in processing an EEO complaint under the statutory appeals procedure and of the employees' right to file a grievance under the negotiated procedure.

C. Management shall, with due care and consideration, timely and properly consider and adjudicate complaints of discrimination filed through the administrative EEO process or the negotiated grievance procedure.

D. Official status

(1) Time for an employee and representative, if any, to process an EEO claim under 29 C.F.R. § 1613 shall be governed by that authority.

(2) Time for an employee and representative, if any, to process an EEO claim under this Agreement shall be governed by Article 9.

13.10 EEO Advisory Committee

A. There shall continue to be an EEO Advisory Committee which shall meet at least twice a year. The Association shall appoint four members of the committee. All appointments to the committee shall be based on interest in, and commitment to, equal employment opportunity. Due consideration shall be given to ensuring that committee membership includes representatives from each protected class. Appointments shall be for terms as specified in the committee's charter. Committee members may be removed from the committee, for cause, by the Director of the Office of Equal Employment Opportunity.

B. Operations and functions of the EEO Advisory Committee shall include but not be limited to:

- (1) identifying and bringing to Management's attention any trends, problems, issues or circumstances that could result in discrimination;
- (2) acting as a forum for an exchange of ideas and proposals of an EEO nature;
- (3) assisting Management by encouraging the support and cooperation of the total work force in the promotion of the overall EEO Program.

§ 13.11 Management will adhere to the principle of equal pay for equal work in accordance with 29 U.S.C. § 206(d).

ARTICLE 14

GRIEVANCE PROCEDURES

§ 14.1 Purpose In the interest of the harmonious and efficient operation of Management, the fair and equitable consideration and disposition of any grievable matter at the lowest - organizational level is encouraged. -

§ 14.2 Definitions

A. Grievance" means any complaint-

- (1) by any employee concerning any matter relating to the employment of the employee;
- (2) by the Association concerning any matter relating to the employment of any employee;
- (3) by any employee, the Association, or Management concerning
 - (a) the effect or interpretation, or a claim of breach of this Agreement; or
 - (b) any claimed violation, misinterpretation, or misapplication of any law, rule, regulation, or policy affecting conditions of employment.

B. An employee is any present or former bargaining unit member who has a timely grievance. The right of a former unit employee to grieve under this procedure pertains only to matters actionable by the employee while a then current member of the bargaining unit.

§ 14.3 Scope

A. This grievance procedure does not apply to any grievance concerning:

- (1) any claimed violation of Subchapter III of Chapter 73 of Title 5 U.S.C., relating to prohibited political activities;

- (2) retirement, life insurance, or health insurance;
- (3) a suspension or removal under 5 U.S.C. 7532;
- (4) any examination, certification, or appointment;
- (5) the classification of any position which does not result in the reduction in grade or pay of an employee;
- (6) notice of a proposed action;
- (7) termination of a temporary promotion of two years or less when the employee is returned to the position from which promoted;
- (8) termination of any employee serving a trial period except as to the procedures described at Article 30;
- (9) a decision concerning an acceptable level of competence;
- (10) any non-bargaining unit condition of employment not affecting unit conditions of employment;
- (11) the filling of any position outside the bargaining unit;
- (12) nonadoption of a suggestion or decision concerning a cash or honorary performance award or a quality increase except as to Management procedures incorporated by reference at Article 37.

B. The grievability/arbitrability of any issue, or the appropriateness of any remedy, may be raised with reference to the authority described at Article 2.

C. Subject to § 14.3A above, an aggrieved employee affected by a prohibited personnel practice under 5 U.S.C. § 2302(b)(1) which also falls under the coverage of this Article may raise the matter under a statutory procedure or this procedure, but not both. An employee shall be deemed to have exercised her/his option under this provision to raise the matter under either a statutory procedure or this procedure at such time as the employee timely initiates an action (for EEO purposes, a formal complaint) under the applicable statutory procedure or timely files a grievance in writing under this procedure, whichever occurs first.

D. Subject to § 14.3A above, an aggrieved employee affected by matters covered under 5 U.S.C. § 4303 and 7512 may raise the matter under the appropriate appellate procedures or this procedure, but not both. An employee shall be deemed to have exercised her or his option under this provision at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing under this procedure, whichever event occurs first.

§ 14.4 Informal Resolution Nothing in this Agreement shall be construed as precluding discussion between an employee and an immediate supervisor on a matter of interest or concern

to either of them. Employees are encouraged, but not required, to discuss a potential grievance with the immediate supervisor toward possible resolution. Once a matter has been made the subject of a grievance under this procedure, the Association will be given the opportunity to be present at any formal discussion concerning the grievance.

§ 14.5 Representation Pursuant to 5 U.S.C. § 7114(a)(5), an employee filing a grievance under this procedure may be represented only by her/himself or by the Association.

§ 14.6 Right to Present Grievances

A. Employees are assured of the right to present a grievance on their own behalf. The Association is assured of the right to be present during the grievance proceeding.

B. The Association is assured of the right, in its own behalf or on behalf of any employee in the unit represented by the Association, to present and process grievances.

C. In presenting a grievance, the aggrieved employee and the duly designated representative, if any, shall be free from restraint, interference, coercion, discrimination, and reprisal.

D. The Association shall be provided with copies of all grievances and related decisions of pro se employees, on or about the time such grievance is filed and such decision is issued, as appropriate. Information may be sanitized where a clearly unwarranted invasion of personal privacy exists.

§ 14.7 Confidentiality

The Association shall respect the privacy of the Agency's employees in discharging its representational functions under this Article. Information designated confidential by Management will be maintained as such by the Association. The exercise of the Association's discretion to release confidential data shall be on a need to know basis. The Association will return or certify as to the destruction of, as appropriate, any confidential information (and copies thereof) obtained from Agency sources when the information is no longer relevant and necessary for the discharge of representational functions under the grievance and arbitration provisions of this Agreement, including those provisions addressing administrative or judicial review of arbitration decisions.

§ 14.8 Requirement to Follow Proper Directives An employee dissatisfied with an order must follow the order first and then grieve the propriety of the order except where the employee has a reasonable apprehension of death or serious bodily injury. In such event, the employee will report the matter to an appropriate supervisor and remain available for further appropriate direction. Failure to follow an order which has been finally found improper by a third party shall not constitute a proper cause for disciplinary action.

§ 14.9 Official Time Official time for the purposes of this Article shall be granted in accordance with Article 9.

§ 14.10 Content of Employee Grievance

A. Completion of the Grievance Form (Appendix 1) shall constitute compliance with the information requirements for the employee grievance procedure.

B. When the form is not used, the following information must be provided in writing to the immediate supervisor:

(1) date submitted;

(2) name of the grievant and representative, if any;

(3) sufficient detail to identify the basis of the grievance, including the alleged facts and contractual or legal authority allegedly violated;

(4) a request for a meeting, if desired; and

(5) the remedy sought. The remedy shall relate to the employment of the employee;

(6) the employee's signature.

C. A timely filed grievance may be returned for completion of the information required by § 14.10B above. In returning a grievance for completion, Management shall indicate what information is needed. The information shall be provided promptly, but not later than three workdays following receipt of the returned grievance.

D. When a timely grievance has been returned for completion of missing information, the time period for Management's response shall be tolled pending receipt of the missing information.

E. When the Association exercises its statutory right to grieve on behalf of employees in the unit, signatures of the employees may be deleted. The name(s) of the aggrieved party(ies) may also be deleted when not relevant and necessary to the processing of the grievance.

§ 14.11 Timeliness of Filing.

A grievance is timely filed when it is postmarked or personally delivered to a Management official within the time limits established in this Article. When a postmark is missing or unreadable, the grievance shall be considered timely if received on or before the fifth day following the expiration of the time limit for personal filing.

§ 14.12 Failure to Observe Time Limits

A. Failure on the part of the responding party to observe time limits shall entitle the aggrieved party to proceed to the next step.

B. Failure on the part of the aggrieved party to meet time limits shall terminate the grievance.

C. Exceptions to the above may be granted if a reasonable explanation is promptly provided for the failure, together with the absence of prejudice to the responding party.

§ 14.13 Waivers

Any procedure or time limit in this Article may be waived by mutual consent confirmed in writing. A waiver by a pro se employee cannot operate to abridge an Association right.

§ 14.14 Computation of Time Limits

In computing time limits, the date of the act or occurrence shall not be counted. A time limit ending on a weekend or Federal holiday shall be extended to the next workday.

§ 14.15 Withdrawal, Substitution, Consolidation, & Joinder

A. Grievances may be consolidated or joined whenever possible.

B. An employee may voluntarily withdraw a grievance at any time prior to the Association's invocation of arbitration. Except for grievances processed by employees on their own behalf, the Association shall have the right to substitution at any time prior to the deadline for proceeding to the next step. Notice of the exercise of such right shall be in writing to the Management official before whom the matter is pending or to the General Counsel.

§ 14.16 Grievability/Arbitrability Declarations concerning the grievability or arbitrability of a dispute should be made as early as possible during the processing of a grievance, arbitration, or appeal therefrom, but shall be made promptly after the allegation is formed. Unnecessary processing of a grievance will be avoided.

§ 14.17 Employee Grievance Procedure

A. Association grievances on behalf of employees will be filed under this procedure. The contents will be as described at § 14.10.

B. Time limit for filing

(1) Except as provided at (2) below, a grievance must be filed within twenty days of the earlier of the date the employee knew or reasonably should have known of the event grieved.

(2) Grievances concerning a continuing practice shall be filed within twenty days of the earlier of the time the employee knew or reasonably should have known of the continuing practice being grieved. This shall not preclude timely grievances alleging a violation, misinterpretation, or misapplication of an established practice.

C. Place of Filing at Step 1 A grievance concerning an individual employee shall be filed with the immediate supervisor. A grievance common to two or more employees with different supervisors may be initiated at the first common level of supervision with a copy to the immediate supervisors. The required content of the grievance is described at § 14.10.

D. Grievance Meeting If a meeting has been requested by the employee, the supervisor or designee will meet with the employee and representative, if any, to discuss the grievance. The

meeting will be scheduled and held promptly, normally within five workdays of receipt of the grievance unless otherwise agreed.

E. Step 1 Decision

(1) Time Limit for Response A written decision at step 1 will be provided:

- (a) within twenty days of receipt of the grievance, or
- (b) within twenty days of the date of a grievance meeting, whichever is later.

(2) Contents of Response

The decision shall respond to the allegations in the grievance and to the remedy requested. The granting of the remedy sought shall terminate the grievance. If the remedy is not fully granted, the decision shall state:

- (a) the basis for the denial;
 - (b) the identity of the step 2 grievance official;
 - (c) the time limit for proceeding to step 2;
- and
- (d) a brief summary of any grievance meeting.

F. Time Limit for Filing at Step 2

Within fifteen days of receipt of a decision unfavorable to the aggrieved employee(s), or if no timely decision is issued at step 1, a grievance may be appealed to Step 2 of this procedure.

G. Contents of Step 2 Grievance

A step 2 appeal shall follow the step 1 format and include:

- (1) a copy of the original grievance and Management's response, if any;
- (2) date of the step 2 appeal;
- (3) any information or argument to be considered at step 2;
- (4) the remedy sought (if different from step 1). The remedy shall relate to the employment of the employee.

H. Place of Filing at Step 2 A step 2 appeal shall be filed with the person described in the step 1 decision or, if none is specified, with the General Counsel.

I. Step 2 Response The decision will be provided within twenty days of receipt of the grievance, responding to the allegations and remedy requested. If the remedy sought is granted, the grievance shall be considered resolved and terminated. If the remedy is not granted, the decision will advise the employee of the right to request the Association to invoke arbitration.

J. Bypassing Step 2

Any unresolved grievance involving a grievable removal or reduction in grade can be submitted by the Association to binding arbitration within thirty days of receipt of Management's decision at step 1 in lieu of proceeding to step 2.

§ 14.18 Management/Association Grievances

A. A grievance may be filed by Management or the Association when it is alleged that rights accruing to the grieving party have been violated.

B. Matters which may be raised under the employee grievance procedure shall not be raised under this procedure. However, where rights accrue to both an employee(s) and the Association or Management, each may pursue those rights in separate actions.

C. Time Limit for Filing

(1) Except as provided at (2) below, a grievance must be filed within twenty days of the earlier of the date the Association knew or reasonably should have known of the event grieved.

(2) Grievances concerning a continuing practice shall be filed within twenty days of the earlier of the time the Association knew or reasonably should have known of the continuing practice being grieved. This shall not preclude - timely grievances alleging a violation, misinterpretation, or misapplication of an established practice.

D. Place of Filing A grievance shall be filed with the local office head or chapter representative, as appropriate. A grievance concerning only Agency-wide issues may be initiated by and with the General Counsel and Association President, as appropriate.

E. Contents

The grievance shall be in writing and include:

- (1) date presented;
- (2) name and title of the grieving party's representative;
- (3) sufficient detail to identify the basis of the grievance;
- (4) the specific authority allegedly violated; and
- (5) the remedy sought. The remedy shall relate to bargaining unit conditions of employment.

F. Response If unresolved, the responding party shall answer in writing within twenty days. The response shall state the basis for denying the relief sought.

G. Appeal

For grievances initiated at the local level, an unresolved grievance may be appealed to the General Counsel or Association President within fifteen days of a decision or due date for decision, whichever is earlier. The responding party shall have fifteen days to answer.

H. Arbitration may be invoked within thirty days of a decision or a due date for a decision, whichever is earlier.

§ 14.19 Right to Arbitrate

Any grievable matter not satisfactorily settled under the procedures contained herein shall be subject to binding arbitration which may be invoked by either the Association or Management.

§ 14.20 A removal, demotion, or suspension for more than fourteen days taken against any employee is subject to the harmful error rule. Other actions shall not be voided for harmless error. As to such other actions, Management shall have the burden of establishing that the error was harmless.

ARTICLE 15

ARBITRATION

§ 15.1 Invoking Arbitration

Any grievance processed under Article 14 may be referred to arbitration by Management or the Association not later than thirty days following a final decision or the due date of a final decision, whichever is earlier. The party invoking arbitration shall provide written notice of such intent within the thirty day period.

§ 15.2 Obtaining an Arbitrator and Selecting a Hearing Date

A. Within five workdays of receipt of the above notice, a list of seven potential arbitrators shall be requested jointly by the parties through the Federal Mediation and Conciliation Service. The parties shall meet within five workdays of receipt of the list to strike names (alternating for each name and for each arbitration) and to otherwise arrange for the arbitrator's services. Upon selection, a joint letter of appointment shall be sent to the arbitrator, identifying the matter in dispute and available hearing dates. A hearing shall not be scheduled earlier than thirty days from receipt of the notice to invoke arbitration.

B. Hearing dates will be postponed or rescheduled only upon agreement of the parties. The parties will have thirty days' notice of hearing.

C. Disputes over consolidation or joinder will be submitted to the arbitrator who shall resolve such disputes no later than thirty days prior to the hearing.

§ 15.3 Pre-hearing Preparation

A. At least fifteen days prior to the hearing, the parties shall have received and served upon the arbitrator:

- (1) statements of factual and legal issues, and of the party's position on those issues;
- (2) proposed stipulations of fact and legal authority, including contractual matters;
- (3) lists of proposed witnesses, together with a brief statement of the expected testimony of each witness; and
- (4) proposed hearing exhibits.

B. For good cause, any of the above may be submitted after the referenced deadline.

C. The parties shall not unreasonably refuse to stipulate to any matter proposed for stipulation.

D. Hearings shall be waived when the parties agree there are no factual issues in dispute.

§ 15.4 Witnesses

A. Each party will keep the number of its witnesses to the minimum necessary for adequate presentation of relevant, material, and not unduly repetitious testimony. An opportunity will normally be provided the opposing party to stipulate to the proffered testimony of a potential witness.

B. A witness' proposed testimony, or parts thereof, will be approved by the arbitrator only when material, relevant, and not unduly repetitious.

C. A proposed witness may be challenged to the arbitrator within three workdays of the pre-hearing exchange of information. The arbitrator shall rule on the challenge promptly.

§ 15.5 Hearing

A. Arbitrations arising from an employee grievance shall be at or near the employee's worksite unless otherwise agreed. Management may pay travel and per diem to facilitate its choice of a hearing site.

B. Administrative support services (i.e., hearing site, furniture, conference area, photocopier, telephone, waiting area) for the hearing shall be arranged and provided by Management.

C. All hearings shall be tape recorded by a transcription service unless agreed otherwise by the parties. A transcript shall be provided to the arbitrator upon her/his request and by mutual

agreement of the parties. Management will endeavor to obtain taping and transcribing services at the lowest available cost. Either party may order a transcript at its own cost for its own use.

D. Post hearing briefs may be submitted by either party as of right within thirty calendar days of the close of the hearing or, when transcripts are made, within thirty days of receipt of the transcripts, whichever is later. Extensions may be granted by the arbitrator for good cause. Briefs will be served on all parties.

§ 15.6 Authority of the Arbitrator

A. The arbitrator shall resolve grievability/arbitrability issues at the earliest appropriate opportunity. Pre-hearing motions shall be permitted on such issues.

B. The arbitrator shall decide only the issue(s) presented by the parties or, when an issue is not jointly submitted, the arbitrator shall decide only that issue reasonably framed by the arbitrator in view of the evidence and arguments presented. The decision and award shall be directly responsive to, and confined to, the issue framed or presented, drawing its essence from the Agreement. This shall not preclude the arbitrator from drawing on any relevant source as an aid in interpreting the Agreement.

C. The arbitrator will have no authority to modify any provision in this Agreement unless expressly authorized by Management and the Association.

D. The arbitrator has no authority to rule on negotiability issues except when presented as a collateral issue in the course of resolving a grievable matter.

E. The arbitrator shall apply a preponderance of evidence standard in all cases other than those premised on unacceptable performance. In such cases the arbitrator shall apply the substantial evidence standard of proof.

F. The arbitrator shall not engage in ex parte communications on matters pertaining to the merits of a dispute. This shall not preclude discussion of administrative arrangements.

G. The arbitrator shall not interpret or enforce a provision of this Agreement so as to deny Management the authority to exercise its reserved rights under 5 U.S.C. § 7106 or to substitute the arbitrator's judgment for that of Management in the exercise of reserved managerial rights. This will not preclude a grievance of any action alleged to be in violation of the authority described in Article 2.

H. The arbitrator shall have no authority to award punitive damages against Management or the United States Government.

§ 15.7 Expenses

For arbitrations taken to an arbitrator, costs billed by the arbitrator will be divided equally. For arbitrations taken to an Administrative Law Judge, costs will be borne by Management.

§ 15.8 The aggrieved employee, representative, and all other employees who are approved as witnesses will be kept in pay status time for hearing-related purposes for the period they would otherwise be in a such status.

§ 15.9 A request for clarification of an arbitration decision shall not extend the time for filing exceptions.

§ 15.10 Attorney fees may be awarded only as provided by applicable authority. The arbitrator shall retain jurisdiction of a case to hear and resolve attorney fee issues. An award of attorney fees must be supported by a fully articulated, reasoned decision with specific findings on each pertinent requirement of 5 U.S.C. § 7701(g)(1).

§ 15.11 The decision and award shall be issued promptly but within thirty days after the close of the record and the arbitrator's receipt of the transcript, if ordered. The award shall be final and binding unless timely submitted for administrative or judicial review in accordance with applicable authority.

§ 15.12

A. In the event it is finally determined by appropriate authority that excepted service non-preference eligible employees are entitled to grievance arbitration of removals, demotions, and suspensions of more than fourteen be final and binding, subject to any right of appeal. If such rights are denied, the decision of an arbitrator shall be advisory only. Where an arbitration is advisory, Management will obtain and pay for an administrative law judge from the Office of Personnel Management.

B. In the interim, before a final decision by appropriate authority, a removal, demotion, and suspension of more than fourteen days will be taken to an arbitrator who will rule on the arbitrability and merits of the action. If the arbitrator rules that the action is arbitrable and rules in favor of the grievant, the decision will become final and binding unless Management appeals from that decision.

C. In the event it is finally decided that non-preference eligibles are entitled to grievance and arbitration of adverse or performance-based actions, Management may reopen this Agreement to address that issue.

D. A final decision for the purposes of this section is a decision not subject to further administrative or judicial appeal.

ARTICLE 16

EXPEDITED ARBITRATION

§ 16.1 Expedited arbitration may be invoked only upon agreement of Management and the Association.

§ 16.2 The hearing will be held within twenty days of the date on which the arbitrator accepts an appointment to the case. Witness lists, including brief statements of expected testimony and stipulations, shall be exchanged and received by the parties and the arbitrator no later than five days prior to the hearing.

§ 16.3 No transcripts shall be made and no briefs shall be - filed in expedited arbitrations unless otherwise agreed, confirmed in writing. Each party shall have the same opportunity to present its evidence and arguments in expedited arbitration as they would have in regular - arbitration.

§ 16.4 Expedited arbitration decisions shall not be precedential unless otherwise agreed in writing by the General Counsel and Association President.

§ 16.5 The arbitrator's authority in an expedited arbitration case shall be the same as that in regular arbitration.

§ 16.6 The arbitrator's decision in an expedited arbitration case shall be rendered within seven days of the date of the hearing. It shall be in writing, but it may be confined to a brief summary of facts, reasoning, authority, and conclusions.

§ 16.7 Arbitration expenses shall be shared as provided at Article 15.

§ 16.8 Travel and per diem expenses will be paid in accordance with Article 9.8.

ARTICLE 17

LABOR-MANAGEMENT MEETINGS

§ 17.1 Meetings between Management and Association representatives may be held periodically at the local and national level to exchange information and discuss appropriate matters of concern and interest involving personnel policies, practices, and other matters affecting working conditions.

§ 17.2 Local Meetings

A. Meetings at the local level shall be scheduled on or about the first workday of each quarter, except as otherwise agreed, to discuss matters of local concern or interest.

B. Official time shall be provided for up to two (or more as mutually agreed) Association representatives in accordance with Article 9. Travel and per diem costs will not be paid for local meetings.

C. An agenda will be exchanged at least ten workdays in advance (generally with brief descriptions). Additional matters may only be discussed by mutual consent.

If no agenda items are timely submitted, the meeting will be considered canceled.

§ 17.3 National Meeting

A. Upon the request of either party, an annual meeting of the parties will be scheduled to discuss matters of Agency-wide concern or interest. Official time shall be provided for up to four (or more as mutually agreed) Association representatives in accordance with Article 9.

B. An agenda shall be exchanged at least ten workdays in advance (generally with brief descriptions). Additional matters may be discussed by mutual consent.

§ 17.4 The parties will not consider specific grievances, complaints or appeals, but may discuss general personnel policies, practices, and working conditions which may give rise to grievances, complaints, or appeals.

ARTICLE 18

ABSENCE, TIME, AND LEAVE

§ 18.1 Annual Leave

A. Employees shall earn annual leave in accordance with applicable rules and regulations.

B. Employees are entitled to a reasonable opportunity to take accrued annual leave, consistent with the office's operating needs, and such leave may be denied - only for just cause. Any denial of a written request must be in writing, stating briefly the reason for the denial.

C. Supervisors may periodically request employees to submit advance written notification of expected leave requests for vacation purposes. If there are more employees requesting leave than can be spared for a given period of time, the affected employees will be given an opportunity to recommend a resolution. The supervisor may also consider the dates of the leave requests and individual circumstances.

D. Approved annual leave will not be canceled except for compelling reasons. Reasonable notice will be given when possible. An employee's work load may be adjusted or redistributed by Management to permit use of annual leave as requested.

E. Requests for advanced annual leave will be in writing and normally will be granted upon a sufficient showing of need and merit. The amount advanced will not exceed that annual leave which will accrue by the close of the leave earning year. Scheduling of advanced annual leave will be consistent with the office's operating needs.

F. When practicable, employees will submit leave requests of three days or more on the SF-71 sufficiently in advance to permit scheduling. Use of the SF-71 for shorter periods is allowed in accordance with local office practice.

G. Sick leave may be substituted for previously approved annual leave when circumstances warranting the use of sick leave occur within a period of annual leave.

H. Management will continue its practice of periodically advising supervisors to schedule annual leave with their employees for the balance of the leave year in order to avoid forfeitures of leave.

§ 18.2 Sick Leave

A. Sick leave shall be earned in accordance with applicable statutes and regulations. Sick leave shall be used only for the purposes authorized by law and regulations.

B. If the use of sick leave is not anticipated, the request for approval shall be called in as soon as practicable, normally within one hour after the start of the employee's tour of duty, or the opening of the office, whichever comes later.

C. When an employee, due to a medical emergency, cannot obtain approval prior to leaving the worksite for necessary medical attention, sick leave will normally be granted after the fact for absences in excess of one hour.

D. An approved absence which would otherwise be chargeable to sick leave may be charged to annual leave or leave without pay if requested by the employee and approved by the immediate supervisor. However, annual leave may not be retroactively substituted for sick leave solely to avoid forfeiture of annual leave.

E. Requests for advanced sick leave will be in writing and will normally be granted upon a sufficient showing of need and merit. The amount advanced will not exceed a total of 240 hours.

§ 18.3 Excused Absences

A. Employees' absences for court or court-related services, conferences and conventions, voting, and permanent changes of duty station will be administered in accordance with Chapters 5 and 7 of the Agency's Attendance and Leave Manual No. 1445.1, distributed in July, 1986.

B. Whenever an emergency situation precludes normal office operating hours, the following will apply:

(1) reasonable efforts will be made to notify employees; and

(2) all affected non-essential employees for whom work is unavailable will be granted administrative leave. This shall not restrict Management's exercise of its reserved right to furlough employees at any appropriate time.

C. Blood Donor Program Participation Employees who donate blood may be excused from duty up to four hours, including travel and any necessary recovery.

D. Occasional tardiness of one hour or less beyond the start of the employee's tour of duty may be excused without charge to leave when the employee provides a satisfactory explanation.

E. Tardiness Due to Emergencies and Hazardous Weather In hazardous weather, tardiness not in excess of two hours may be excused when the employee has satisfied the supervisor that the employee has made every reasonable effort to get to work. Tardiness in excess of two hours may be excused only in instances of unavoidable delay resulting from extremely hazardous weather or from disruption of public or private transportation. Employees who are already on approved leave for the entire day may be granted excused absence because of hazardous weather conditions only when the office is properly closed the entire day.

F. Excess Travel Time for the Convenience of the Traveler and Travel by Privately-owned Vehicle (POV) While on official travel, delays enroute for reasons of personal convenience will not be excused as administrative leave, but will be chargeable to absence without leave, annual leave, or leave without pay. In all cases where the employee travels by POV for personal convenience, excused absence will not be granted for travel time in excess of that required by the most expeditious means of travel practicable.

§ 18.4 Leave for Religious Observances

An employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to work compensatory time for time lost for meeting those religious requirements. An employee may also, at her/his request, be granted annual leave or leave without pay for a workday which occurs on a religious holiday.

§ 18.5 Leaves of Absence Without Pay (LWOP)

A. Requests for LWOP for thirty days or less may be granted upon a showing of sufficient need and merit consistent with the agency's operating needs.

B. Extended LWOP (over thirty calendar days)

(1) Review of Requests for Extended LWOP

Requests for extended LWOP should be carefully examined to ensure that the value to the Agency or the serious needs of the employee are sufficient to offset such expense and inconvenience as:

- (a) loss of employee's services on the job;
- (b) encumbrance of a position;
- (c) obligation to provide continued employment at the end of the approved leave period;
- (d) crediting length of service and retirement up to a maximum of six months in any calendar year;
- (e) complication of reduction-in-force registers; or

(f) complications personally affecting the employee, such as extension of the waiting period for within-grade increases, lack of leave accrual, delays in completion of a probationary period, and-conversion to career or other tenure (such as tenure in excepted service positions).

(2) Criteria for Approval of Extended LWOP Extended LWOP may be approved only if it is apparent that at least one of the following benefits will result:

- (a) better work performance;
- (b) protection or improvement of the employee's health;
- (c) retention of a desirable employee; or
- (d) furtherance of a program of interest to the Government (e.g., Peace Corps volunteers).

C. An employee returning from a leave of absence will normally be placed in the same or equivalent position held at the time the leave began.

§ 18.6 Leave for Maternity/Paternity Reasons

A. Leave for childbirth and care may be a combination of sick leave, annual leave, and leave without pay for a period of up to six months, with a possibility of extension to a total of one year. Leave without pay for maternity/paternity purposes shall be administered in accordance with § 18.5 above.

B. If a pregnant employee requests modification of her work duties, work schedule, or a temporary detail, Management shall endeavor to grant such requests consistent with the office's operating needs.

§ 18.7 The confidentiality of leave records shall be respected.

§ 18.8 Leave requests shall be considered in a fair, impartial, and equitable manner.

§ 18.9 Approved leave, per se, will not be the basis of any disciplinary charge. Employees are expected, however, to observe regular attendance patterns and otherwise be available to discharge the duties of the position to which assigned. An employee's inability to perform her/his job is a proper basis for removal from the Agency.

§ 18.10 Absence Without Leave (AWOL)

Absence without leave is an absence from duty which is not authorized. The employee receives no pay for the period of the absence. Disciplinary action may also be taken when considered appropriate. If the absence is later excused because the circumstances surrounding the absence are such that the absence would have been approved, the AWOL charge will be changed to the appropriate leave account as requested by the employee. The issue of compliance with leave requesting procedures may be addressed separately.

§ 18.11 Alternative Work Schedules (AWS)

Alternative work schedules in the bargaining unit shall be administered in accordance with the Memorandum of Understanding attached as Appendix 2.

ARTICLE 19

TRAVEL

§ 19.1 Travel shall be scheduled so that, to the maximum extent practicable, the employee performs official travel during normal duty hours.

§ 19.2 Reasonable travel advances shall be made available prior to the date of departure to those employees who make timely applications. Employees will be advised of timeliness requirements so they may make timely application for travel advances.

§ 19.3 Employees who perform official travel for the Agency shall be reimbursed in accordance with law and Government-wide regulations.

§ 19.4 Management will make every effort to ensure that all claims for payment of travel expenses not advanced will be paid within thirty days after submission of the travel voucher.

§ 19.5 Employees shall not be required to use privately owned vehicles (POVs) for government business.

§ 19.6 Consistent with Article 18, annual leave may be used by an employee in connection with travel.

ARTICLE 20

OVERTIME AND COMPENSATORY TIME

§ 20.1 Overtime work shall be ordered, approved, and compensated in accordance with applicable law and regulations.

§ 20.2 Overtime requests will be evaluated on their individual merits. An employee whose request is denied will be provided a brief statement of the reason(s) upon request.

§ 20.3 Approved overtime will be scheduled as far in advance as practicable. This will not preclude retroactive approval.

§ 20.4

A. Qualified volunteers will be preferred over other qualified personnel for authorized overtime work.

B. Management need not solicit volunteers when an employee requests overtime to complete a specific case.

§ 20.5 Distribution of overtime assignments shall be on an equitable basis to the extent practicable.

§ 20.6 Compensatory time earned and accrued shall be scheduled and used within one year from the date of accrual.

ARTICLE 21

ADVERSE AND DISCIPLINARY ACTIONS

§ 21.1 This Article addresses actions based on (i) misconduct, (ii) actions based on both misconduct and unacceptable performance, and (iii) unacceptable performance processed under the efficiency of the service standard.

§ 21.2 Definitions:

A. A disciplinary action is a written reprimand or a suspension of fourteen days or less.

B. "Suspension" means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

C. Adverse action" means a removal, a suspension for fifteen days or more, a reduction in grade or pay, or a furlough for thirty days or less.

§ 21.3 Coverage

Exceptions to the coverage of this Article include:

A. a suspension under 5 U.S.C. §§ 7521 or 7532, or any action initiated under 5 U.S.C. § 1206;

B. an action taken against a reemployed annuitant;

C. an action taken under provision of statute, other than one codified in Title 5, U.S.C., which excepts the action from subchapter II, Chapter 75, 5 U.S.C.;

D. an action which entitles an employee to grade retention under 5 C.F.R., Part 536, and an action to terminate this entitlement;

E. a voluntary action initiated or approved by the employee;

F. an involuntary retirement because of disability under 5 C.F.R., Part 831;

G. a reduction in force under 5 U.S.C. § 3502;

H. a reduction in grade or removal under 5 U.S.C. § 4303;

I. any action against any employee whose position of record was not in the bargaining unit at the time of such action;

- J. a termination of a temporary promotion within two years from the date of promotion;
- K. a termination of a term promotion of not more than five years; and
- L. a termination in accordance with terms specified at the time of appointment.

§ 21.4 Standards of Conduct

- A. Employees are required to familiarize themselves with and observe the Standards of Conduct described in 5 C.F.R., Part 735. These regulations, which have been adopted by Management, make essential the maintenance of unusually high standards of honesty, integrity, impartiality, and conduct. Conduct prejudicial to the Federal Government is prohibited.
- B. A violation of the Standards of Conduct may be cause for appropriate disciplinary, adverse, or other remedial action which may be in addition to any penalty imposed by law.
- C. Questions concerning the application, interpretation, or administration of the Standards of Conduct are to be directed to the Ethics Officer.

§ 21.5

- A. Actions under this Article shall be taken only for just cause, i.e., such cause as will promote the efficiency of the Federal Service.
- B. Except for serious offenses, penalties will be progressive. Management will assess penalties commensurate with the severity of the offense and any mitigating factors.
- C. Non-disciplinary warnings or counselings may be considered in assessing penalties.
- D. Prior penalties for misconduct identified in the notice may be relied on in assessing a penalty when such action was:
 - (1) written,
 - (2) reviewable by a higher level of authority, if possible; and
 - (3) made a matter of record.
- E. Subject to § 2.8, prior disciplinary or adverse actions, if older than three years, will normally be disregarded in assessing a subsequent penalty except when egregious or similar to the offense charged.
- F. In determining whether to take an action under this Article, Management will consider whether the employee knew or reasonably should have known the conduct was improper.

§ 21.6

- A. An employee against whom an adverse action is proposed is entitled to-

(1) at least thirty days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

(2) a reasonable time, but not less than seven days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer (this shall not be construed as a right to a formal hearing with examination of witnesses);

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefore at the earliest practicable date.

B. An employee against whom a suspension of fourteen days or less is proposed is entitled to written notice and an opportunity to respond at least seven days in advance of the action.

§ 21.7 Copies of the notice of proposed action, the answer of the employee if written, an accurate summary thereof if made orally, the notice of decision and reasons therefore, together with any supporting material relied upon, shall be maintained by Management and shall be furnished to the employee affected and the employee's designated representative, or physician, as appropriate, upon request.

§ 21.8 A letter of reprimand shall be identified as such and state the specific reasons supporting it. The employee's response, or summary thereof, will be maintained with the reprimand. A letter of reprimand may be officially maintained and relied upon for up to one year; it will be removed from the Official Personnel Folder/Employee Performance File thereafter.

§ 21.9 Records will be maintained, corrected, or expunged in a manner consistent with final and binding determinations of an appropriate authority.

§ 21.10 Actions will be processed discreetly, i.e., with due regard for an employee's Privacy Act rights.

§ 21.11 A notice of proposed action shall inform the employee of her/his right to review the material which is relied on to support the reasons for action given in the notice. Management will not rely on material which cannot be disclosed to the employee, her/his designated representative, or physician under 5 C.F.R. § 297.204(c), to support the reasons in the notice. Management may rely on additional information developed after the proposal notice only if such information has been made available to the employee, representative, or physician, together with a reasonable time for the employee to respond.

§ 21.12 An employee who wishes to have Management consider any relevant medical condition which may contribute to a performance, leave, or conduct problem shall submit medical documentation as soon as possible. Management may require or offer a medical examination in accordance with applicable authority.

§ 21.13 Decision

In arriving at its decision, Management shall rely on only those reasons for which the employee has been given notice and an opportunity to respond. Management shall consider any timely response by the employee in arriving at its decision.

§ 21.14

A. Management may disqualify as an employee's representative an individual whose activities as representative would cause a conflict of interest or position; or an employee whose release from her/his official position would give rise to unreasonable costs or whose priority work assignments preclude such release.

B. An employee whose representative is disqualified by Management will be afforded a reasonable opportunity to select a new representative or proceed in the absence of the representative. Deadlines will be extended, as appropriate, to insure reasonable preparation time.

C. Management will respect the statutory and contractual rights of employees by not unlawfully or improperly interfering with, restraining, or coercing employees in the exercise of activity protected by statute or this Agreement.

ARTICLE 22

PERFORMANCE-BASED ACTIONS

§ 22.1 This Article applies only to a reduction in grade or a removal based on unacceptable performance.

§ 22.2 Management may reduce in grade or remove an employee for unacceptable performance. The procedures are as described in law, regulation, and this Article.

§ 22.3 Performance-based actions are not subject to mitigation.

§ 22.4

A. An employee whose reduction in grade or removal is proposed for performance based reasons is entitled to-

(1) Thirty days advance written notice of the proposed action which identifies-

(a) specific instances of unacceptable performance by the employee on which the proposed action is based; and

(b) the critical elements of the employee's position involved in each instance of unacceptable performance;

(2) Be represented by an attorney or other

representative;

(3) A reasonable time to answer orally and in writing, including notice of, and an opportunity to review, the material relied upon in proposing the action; and

(4) A written decision which-

(a) specifies the instances of unacceptable performance by the employee on which the reduction in grade or removal is based, and

(b) unless proposed by the head of the Agency, has been concurred in by a supervisor or manager who is in a higher position than the proposing official.

B. Management may rely on additional information developed after the proposal notice only if such information has been made available to the employee together with reasonable time for the employee to respond.

§ 22.5 If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for one year from the date of the proposal notice, any entry or other notation of the unacceptable performance for which the action was proposed under this Article shall be removed from any Agency record relating to the employee.

§ 22.6 The decision to retain, reduce in grade, or remove an employee:

A. shall be made within thirty days after the expiration of the notice period, and

B. in the case of a reduction in grade or removal, may be based only on those instances of unacceptable performance by the employee-

(1) which occurred during the one-year period ending on the date of the notice; and

(2) for which the notice and other requirements of law and regulation are complied with.

§ 22.7 Exceptions to the coverage of this Article include:

A. an action taken against a reemployed annuitant;

B. an action which entitles an employee to grade retention under 5 C.F.R. Part 536, and an action to terminate this entitlement;

C. a voluntary action initiated or approved by the employee;

D. an involuntary retirement because of disability under 5 C.F.R. Part 831;

E. an adverse action under 5 C.F.R. Part 752;

F. any action against any employee whose position of record was not in the bargaining unit at the time of such action;

- G. a termination of a temporary promotion within two years from the date of promotion;
- H. a termination of a term promotion of not more than five years; and -
- I. a termination in accordance with terms specified at the time of appointment.

§ 22.8

A. Management may disqualify as an employee's representative an individual whose activities as representative would cause a conflict of interest or position; or an employee whose release from her/his official position would give rise to unreasonable costs or whose priority work assignments preclude such release.

B. An employee whose representative is disqualified by Management will be afforded a reasonable opportunity to select a new representative or proceed in the absence of the representative. Deadlines will be extended, as appropriate' to insure reasonable preparation time.

C. Management will respect the statutory and contractual rights of employees by not unlawfully or improperly interfering with, restraining, or coercing employees in the exercise of activity protected by statute or this Agreement.

§ 22.9 A performance-based action will not be taken until the employee has failed a performance improvement plan as described at Article 26.

§ 22.10 An employee who wishes to have Management consider any relevant medical condition which may contribute to a performance, leave, or conduct problem shall submit medical documentation as soon as possible. Management may require or offer a medical examination in accordance with applicable authority.

§ 22.11 Records will be maintained or expunged, as appropriate, in accordance with applicable law and regulation, including final and binding decisions of appropriate appellate authority.

ARTICLE 23

POSITION DESCRIPTION AND CLASSIFICATION

§ 23.1 The Agency will maintain a written position description for each bargaining unit position which accurately reflects the anticipated duties, responsibilities, and supervisory relationship pertaining to the position's incumbent.

§ 23.2 A copy of the position description will be provided the employee normally upon assignment to the position or as soon as practicable thereafter.

§ 23.3 Management will attempt to assign the full range of duties and responsibilities in the employee's position description of record when consistent with the Agency's needs or other needs of the Federal Service.

§ 23.4 The phrase "other duties as assigned" normally means assignments related to duties currently described for the position, unless temporarily required by the needs of Management. -

§ 23.5 Employees may discuss with their supervisors matters pertaining to their position description. Personnel representatives may be consulted by employees to assist in resolving problems and providing information.

§ 23.6 Position descriptions will be amended to maintain accuracy in the description of major duties and to avoid substantial discrepancies between actual and described duties. Such amendments will be made as soon as practicable.

§ 23.7 An employee may file an internal classification appeal. Appeal rights and procedures shall be provided upon request by the Division of Personnel.

§ 23.8 The Association may assist and represent an employee, upon request, in an internal classification appeal.

§ 23.9 The Association will be informed of new or revised position classification standards of bargaining unit positions within thirty days of receipt.

§ 23.10 The Association will normally be provided thirty days' notice of a classification survey impacting on general conditions of employment in the unit. The reason for the survey, the organizational entity, and the positions being studied will accompany the notice. Final classification decisions and evaluation statements will be furnished to the Association upon request.

§ 23.11 Employees who have been downgraded due to reclassification will be given, for a two year period, priority consideration for vacancies at their former grade level.

ARTICLE 24

TRAINING AND CAREER DEVELOPMENT

§ 24.1 Appropriate training and career development of employees is of significant importance. Training and developmental opportunities will be offered internally and externally, subject to available funding and Agency priorities.

§ 24.2 Employees should exercise initiative in realizing their career potential and are encouraged to take advantage of appropriate training and developmental opportunities meeting individual and Management objectives. Reasonable efforts will be made to publicize relevant training information so as to allow employees to make a timely expression of interest.

§ 24.3 Supervisors will discuss training needs with employees at least annually and encourage employee participation in establishing a reasonable goal-oriented plan for the employee's career development.

§ 24.4 Management will solicit and consider Association suggestions and comments on employees' training and development.

§ 24.5 Nomination and selection for training, including management courses offered to bargaining unit employees, will be made in a fair and impartial manner consistent with Management's operating needs.

§ 24.6 Employees will be notified of the disposition of their training requests and, upon request, of the basis therefore.

§ 24.7 Factors which may be considered in making selections for training and developmental opportunities include:

- A. length of Agency employment;
- B. frequency of participation in other programs;
- C. priority needs of the employee, including training to retain job status;
- D. the purpose of the training; and
- E. funding and priority needs of Management.

§ 24.8 Official time for labor management relations training is described at Article 9, Official Time. Administrative leave and leave without pay for professional development is described at Article 18.

§ 24.9 Management may authorize official duty status for attendance at approved training.

ARTICLE 25

VACANCIES AND PROMOTIONS

§ 25.1 When practicable, vacancies for bargaining unit positions will be publicized to employees, including Association chapter representatives, sufficiently in advance to permit timely application. Desirable knowledge, skills, or abilities for the position will be described. For unusual positions, the notice will include a summary of the duties.

§ 25.2 Agency employees (which may include employees outside the bargaining unit) will be considered for bargaining unit vacancies prior to applicants from outside the Agency. This shall not preclude Management from making selections from any appropriate source.

§ 25.3 In the event an outside applicant is selected, bargaining unit applicants or the Association will be provided, upon request, a brief written statement of the reason(s) for the selection.

§ 25.4 Management will give full and fair consideration to all candidates when it exercises its reserved right to fill a vacancy.

§ 25.5 For good cause, the selecting official may admit late applications, prior to an offer being made.

25.6 Career ladder promotions

A. Career ladder plans must show the promotion criteria at each grade level of the plan which employees must meet to be promoted. A copy of the plan will be given to employees as they enter each level of the plan.

B. When career ladder plans are established or revised, Management will notify the Association prior to implementation.

C. At the time an employee receives a MSPB summary rating of fully successful or better, meets the time-in-grade requirements below, and any other appropriate promotion requirements, Management will make a decision to promote or not promote:

- GS-09 to GS-11 12 months
- GS-11 to GS-12 12 months
- GS-12 to GS-13 12 months
- GS-13 to GS-14 18 months

D. Promotions to the grade 15 level are not part of a career-ladder progression but rather are determined on a competitive basis. The procedures for any such promotions will be in accordance with the practice negotiated by the parties following notice provided in accordance with Article 6. In the event promotions to the GS-15 level are established by Management as part of the career-ladder progression, the waiting period for promotion from GS-14 to GS-15 will be 24 months.

E. A decision to promote will be effected at the beginning of the first full pay period following the decision.

F. If an employee eligible for promotion is not promoted, he/she will be given notice of the reason(s). The notice will be in writing upon the employee's request.

ARTICLE 26

PERFORMANCE APPRAISAL SYSTEM

§ 26.1 Employees will be given the opportunity to participate in the development of job elements and performance standards, including discussion with the employee's supervisor. While an employee may suggest elements or standards, their determination is reserved to Management.

26.2 The Association may offer, and Management will consider, comments or suggestions on the content of performance standards of bargaining unit employees.

§ 26.3

A. Job elements and performance standards shall be: 1) related to the employee's assigned duties; and (2) objective to the maximum extent feasible.

B. Appraisals shall, to the maximum extent feasible, accurately reflect performance and demonstrate internal consistency with narrative statements, element grades, and the summary rating.

C. In evaluating the performance of employees, consideration may be given to relevant extenuating circumstances concerning, nonexclusively, approved leave, case receipts, collateral responsibilities, complexity of assignments, travel, staffing, and personal problems.

§ 26.4 Management will communicate its performance standards, through dialogue or otherwise, with sufficient specificity to provide a firm benchmark" toward which an employee can aim her/his performance. Components, when used by Management, will be communicated so that the employee knows or should know their significance in relation to the element as a whole. This shall not be construed as requiring a relative weighting system.

§ 26.5 Elements and standards should be current, and modifications are encouraged whenever needed. Any such changes will be promptly communicated to the employee(s) concerned. Performance will be appraised according to the standard in effect at the time the work was performed.

§ 26.6 In addition to annual evaluations, supervisors should periodically review the performance of employees, offering constructive assessment and alerting employees to apparent deficiencies.

§ 26.7 Performance appraisals will be based upon a reasonable opportunity to demonstrate acceptable performance under prescribed elements and standards, but not less than ninety days.

§ 26.8

A. Appraisals should be completed either on an agreed upon annual date for all unit employees or on the anniversary date of the appointment, last promotion, or last within-grade increase, as appropriate, unless deferred under B below.

B. An appraisal may be deferred upon the consent of the appropriate Management official when:

(1) an action for unacceptable performance in the employee's current position is pending;

(2) the employee's performance is temporarily unacceptable for health or other personal problems, but is reasonably expected to improve within the near future;

(3) the employee is on extended approved absence; or

(4) for other good cause shown.

§ 26.9 Performance Improvement Plan (PIP)

A. In the event a question arises as to whether an employee's performance is less than minimally satisfactory the employee will be provided a written PIP and not less than ninety calendar days to demonstrate a minimally successful level of performance. This shall not apply to determinations concerning employees serving a trial period.

B. In developing a PIP, the employee will be given an opportunity to discuss her/his performance and suggested means of improvement, including requests for assistance.

C. The PIP will include:

(1) a statement of the performance deficiencies, with specific illustrative examples, as measured against elements and standards;

(2) reasonably specific results to be achieved, together with a timetable;

(3) assistance to be provided the employee which may include formal training, self training, consultation with other employees, and discussions or training by the supervisor;

(4) the date the employee will be informed of the PIP results. This may include a formal performance appraisal outside the normal appraisal period.

D. At the conclusion of a PIP, the supervisor will decide whether a performance-based action is appropriate. Before effecting any such action, the supervisor will consider appropriate alternatives, if any, and upon request provide a summary statement of the basis for rejecting appropriate lesser alternatives. This statement is provided solely for the purpose of assuring the employee that any appropriate alternatives were in fact considered.

§ 26.10 Appraisal Interview

A. The supervisor will offer the employee an opportunity to discuss the employee's performance prior to completing the employee's appraisal. The discussion may include a review of the employee's professional progress, problems encountered, proposals for future development, and an assessment of her/his readiness for promotion and estimation of individual potential. Ratings of record may not be communicated to employees prior to approval by the final reviewer.

B. For employees in a career ladder progression, the supervisor will advise as to any unmet eligibility requirements or, as appropriate, the reasons for not promoting an eligible employee. Upon the employee's request, this statement will be summarized in writing.

C. The supervisor will consider the employee's suggestions concerning the appraisal, but shall not lower a rating or write a more negative narrative in reprisal for the employee's oral or written remarks.

§ 26.11 The employee will be given an opportunity, normally five work days, to submit concise written comments concerning the employee's appraisal. Ratings of record may not be communicated to employees prior to approval by the final reviewer. The appraisal and comments, if any, shall be forwarded to the reviewer. The reviewer retains the right to raise or

lower an appraisal score. The employee may thereafter submit written comments which will be maintained with the appraisal.

§ 26.12 Performance standards will be applied in a fair and reasonable manner. Except for absolute standards, an opportunity will be allowed for rating above Agency's - "meets" level.

ARTICLE 27

WITH-IN-GRADE SALARY INCREASES

§ 27.1 An employee shall be provided a minimum of sixty days to demonstrate an acceptable level of competence (ALOC) when a question arises as to whether the work is at that level.

§ 27.2. Notice to the employee of a question concerning an ALOC shall be written and describe the work performance deficiencies and the respects in which the work performance must improve to achieve an acceptable level of competence.

§ 27.3 The sixty-day notice period will normally be provided in advance of the end of the waiting period. When not so provided, the sixty-day period may extend, as needed, beyond the end of the waiting period. A negative ALOC determination shall not be made prior to the expiration of the sixty day notice period.

§ 27.4 Failure to give sixty days' notice prior to the end of a waiting period may not be the basis for granting a within-grade increase.

§ 27.5 If the employee's level of competence following the sixty day notice is determined to be acceptable, the increase shall be effective as of the date following completion of the regulatory waiting period.

ARTICLE 28

DETAILS

§ 28.1 "Detail" means the temporary assignment of an employee to a different position or unclassified set of duties for a specified period of time with the employee returning to the position of record at the end of the temporary assignment.

§ 28.2 When practicable, relevant information concerning bargaining unit details will be publicized so as to allow interested employees to make timely application.

§ 28.3 Advance notification of a detail will be provided an employee as soon as practicable. A written or oral explanation of the reasons for the detail will be provided upon request. When circumstances permit, consideration will be given an employee's comments or suggestions prior to the detail.

§ 28.4 Selection for details will be made in a fair and equitable manner. Qualified volunteers will be considered in lieu of an involuntary detail.

§ 28.5 Factors which may be considered in making selections for details include:

- A. length of Agency employment;
- B. frequency of participation in other details;
- C. priority needs of the employee;
- D. the purpose of the detail; and -
- E. funding and priority needs of Management.

§ 28.6 Details will not be rotated solely to avoid compensation at the higher level.

§ 28.7 Employees who are detailed to a higher graded bargaining unit position for a period of more than 120 days will be temporarily promoted to that position.

§ 28.8 Employees detailed for thirty days or longer will be provided an SF-52 and a copy of the position description or other description of duties.

§ 28.9 Travel Expenses on Details Reasonable travel expenses will be authorized detailees for return home travel when it results in savings to Management. In other situations, the employee will be permitted reimbursement up to the actual subsistence expenses which would have been allowable at the TDY site. An employee who stays with friends or relatives during the week at no cost to Management may use commercial lodging rates in determining "what would have been allowed" had the employee remained at the TDY site, when the employee voluntarily returns home on non-workdays, and the employee may be reimbursed for the return home travel.

§ 28.10 The Association may be consulted prior to involuntarily detailing its representatives.

ARTICLE 29

REASSIGNMENTS

§ 29.1 "Reassignment" means a change of an employee, while serving continuously within the same agency, from one position to another without promotion or demotion.

§ 29.2 When practicable, relevant information concerning bargaining unit reassignments will be publicized so as to allow interested employees to make timely application.

§ 29.3 Written notification will be provided an employee being reassigned as soon as practicable. When consistent with the needs of the Agency, sixty days' notice will precede a directed reassignment to a different commuting area unless waived by the employee. When circumstances permit, consideration will be given an employee's comments or suggestions prior to a reassignment.

§ 29.4 Reassignments may be made or avoided for personal hardship reasons when consistent with the needs of Management. Qualified volunteers will be considered in lieu of a directed reassignment. When an involuntary reassignment is deemed necessary by Management, consideration may be given first to qualified employees with the least seniority by service computation date.

§ 29.5 Subject to funding, reasonable travel expenses and official time will be authorized and paid in accordance with applicable authority when incidental to a reassignment to another commuting area made in the interest of the Government.

§ 29.6 Involuntary reassignments will be directed only for legitimate management reasons.

§ 29.7 The Association may be consulted prior to involuntarily reassigning its representatives.

ARTICLE 30

TRIAL PERIOD EMPLOYEES

§ 30.1 Trial period employees are those employees serving their first year (365 days) under an initial appointment.

§ 30.2 Trial period employees should be kept informally appraised of their performance. On or about completion of nine months' service, they shall have the opportunity to informally discuss their performance with the appropriate supervisor.

§ 30.3 In the event Management decides to terminate a trial period employee's appointment, the following procedures will be observed:

A. The employee will be provided fifteen days written notice, or such notice as the remaining trial period permits, of the action, a brief statement of the reason(s) and the effective date.

B. The employee may respond in writing within seven days of receipt of the notice.

C. A response will be provided to any submission made under section B above.

§ 30.4 Reinstatement shall not be available as a remedy for any breach of this Article. Payment for the full notice period may be an appropriate remedy provided that such payment does not directly or indirectly result in a change in the employee's trial status.

§ 30.5 A trial employee being furloughed will be given the same notice as non-trial employees.

ARTICLE 31

RIF, TRANSFER OF FUNCTION, REORGANIZATION

§ 31.1 Nothing in this Article shall be construed or enforced as an independent contractual requirement upon Management's reserved right to conduct a RIF, transfer of function, or reorganization.

§ 31.2 Formal notice of a decision to invoke RIF, transfer of function, or reorganization authority will be provided the Association, together with an opportunity to negotiate, in accordance with Article 6. Management's practice of advising the Association of a potential RIF, transfer of function, or reorganization will be continued.

§ 31.3 An employee adversely affected by a RIF, reorganization, or transfer of function may be given up to ninety days' notice, but shall be given at least sixty days' specific notice.

§ 31.4 Employees shall respond to any job offer as soon as possible, but not more than ten days from receipt of the offer unless otherwise agreed by Management and Association.

§ 31.5 Ties in retention standing will be broken by time within current grade and, if necessary, by lottery.

§ 31.6 A RIF may be minimized or avoided by reassignment, retraining, hiring freeze, utilization of existing or projected vacancies, details, attrition, modified work schedules, furloughs, or extended leaves of absence.

§ 31.7 Prior to issuance of RIF notices, employees in the affected competitive area will be advised to review their Official Personnel Folders (OPF) to ensure accuracy and completeness thereof. The OPF (or copy) will be made available at the duty station; Division of Personnel assistance will be provided upon request.

§ 31.8 Assistance in finding employment within the commuting area may be provided adversely affected employees. This will include canvassing other agencies for appropriate vacancies.

§ 31.9

A. If Management fills vacancies during a RIF notice period, priority consideration will be given adversely affected employees.

B. Outside hiring for unit positions will be frozen during the specific notice period of a RIF where:

(1) a qualified, adversely affected applicant is ready and willing to fill the position; or

(2) a call for voluntary reassignment(s) directly or indirectly creates a vacancy which

(a) Management elects to fill; and

(b) a qualified, adversely affected employee is ready and willing to fill.

§ 31.10 An employee adversely affected by a RIF, transfer of function, or reorganization may be granted reasonable administrative leave for job search efforts.

§ 31.11 In the event of a major RIF, as defined by the Office of Personnel Management, early retirement authority will be requested from OPM in accordance with Federal Personnel Manual criteria for such requests.

§ 31.12 Separated employees will be counseled on availability of unemployment benefits, rights to severance pay, placement assistance, and upon request, retirement benefits.

ARTICLE 32

REEMPLOYMENT PRIORITY

§ 32.1 Management shall accord re-employment rights for qualified personnel separated by reduction-in-force (RIF) in a manner equivalent to the Reemployment Priority Lists (RPLs) procedures for the competitive service as described in relevant OPM authority, except as provided in this Article.

§ 32.2 This Article applies to bargaining unit positions only; however, Management may offer non-unit positions to employees on the RPL.

§ 32.3 The duration of eligibility for reemployment priority listing will be one year from the date of the separation. Thereafter, priority consideration will be provided for an additional one-year period to qualified applicants. Priority consideration is as defined in OPM Draft Instruction 335-1, dated July 12, 1985.

§ 32.4 Position offers and vacancy notices will be served by certified mail to the last known address of RPL and priority consideration eligibles. When proof of receipt is unavailable, service is presumed as of the fifth day following the mailing. A response is required within ten days of receipt of an offer or notice, indicating acceptance, declination, or application, as appropriate.

ARTICLE 33

RETIREMENT/RESIGNATION

§ 33.1 Retirement Planning

Within available resources, each employee who is within five years of optional retirement eligibility will be given an opportunity to voluntarily participate in a retirement planning seminar which will include information about a variety of retirement related subjects. Also, any employee anticipating retirement within six months may request and be provided appropriate individual retirement counseling before the tentative retirement date.

§ 33.2 Retirement Counseling at Time of Separation

An employee who anticipates separation by retirement from the Agency is entitled to counseling, upon request, as to present or potential rights and benefits under the retirement system.

§ 33.3 Withdrawal or Extension

After an employee has submitted a resignation or retirement application, the employee may request withdrawal or an extension to a later effective date. A request of this nature must be in writing and be submitted as early as possible before the originally selected effective date. Management may deny a withdrawal or extension request only for valid reasons including, but not limited to, administrative disruption or the hiring, or commitment to hire, a replacement. If the request is denied, the reason(s) will be communicated to the employee in writing.

§ 33.4 Trial Retirement

An employee may submit a written request for trial retirement to the Agency within sixty days before optionally retiring from the Agency. If approved, the employee may then apply, in writing, to the Agency for reemployment as a reemployed annuitant; such a request must be submitted after the end of eleven months of retirement and before one year of retirement has elapsed. If the Agency is then not in an externally-mandated hiring freeze or in a RIF situation (with respect to attorney positions at the location where the employee last worked for the Agency), the annuitant who submits a timely written application for reemployment will be rehired within thirty days at the same grade and step as last held and at the location last worked with the Agency, provided that the Agency still has an office at that location. Any annuitant rehired under this trial retirement provision serves at the will of the appointing authority and is subject to appropriate salary offset against her/his annuity, as provided by law and OPM regulations.

ARTICLE 34

PART-TIME EMPLOYMENT

§ 34.1 Management will continue to provide part-time employment opportunities, consistent with the findings and purpose of the Federal Employees Part-Time Career Employment Act of 1978 (5 U.S.C. § 3401 et seq.), subject to the Agency's resources and mission requirements.

§ 34.2 A copy of the report required to be furnished to the Office of Personnel Management pursuant to 5 U.S.C. § 3407, insofar as it concerns bargaining unit positions, will be furnished to the Association President.

§ 34.3 A full-time employee shall not be required to accept part-time employment as a condition of further employment.

§ 34.4 Employees' requests for conversion between full and part-time status will be considered in light of the needs and resources of the Agency. Preference may be given to requests based on temporary disability.

§ 34.5 Conversion requests will be promptly answered. If denied, a written statement of the reason(s) will be provided upon the employee's request.

§ 34.6 A part-time employee's preferred tour of duty and its effective date will be accommodated when consistent with the needs and resources of Management.

ARTICLE 35

OUTSIDE EMPLOYMENT

§ 35.1 Employees engaging in any outside employment, including pro bono representation, will submit a request for conflict of interest clearance. The request shall contain sufficient information, including any relationship between the employment and the Agency, to enable the supervisor to determine whether an actual or apparent conflict of interest exists between the employee's duties and the outside - employment. Pursuant to Comptroller General decision #B-207996, Management may grant administrative leave for brief absences in connection with approved pro bono activity.

§ 35.2 Nothing in this Article shall be deemed to prohibit an employee from acting with or without compensation, as agent or attorney for him or her self, parents, spouse, child, or any person for whom, or for any estate for which, he or she is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters which would create a real, or apparent, conflict of interest.

ARTICLE 36

SAFETY AND HEALTH

§ 36.1 Management will provide employees a place of employment which complies with safety and health standards applicable to Federal agencies. Where such standards do not address a particular safety or health issue, Management shall act reasonably to provide a safe and healthful place of employment.

§ 36.2 Each employee and the parties should act appropriately to maintain an environment reasonably free of health and safety hazards. Hazards to health or safety should be promptly reported to Management which shall promptly take appropriate corrective action.

§ 36.3 Management offices shall be inspected at least annually, and more frequently when circumstances warrant. An Association representative will be permitted to accompany the designated health and safety inspector on official time and to receive a copy of any report made.

§ 36.4 A. Employees are assured of their right to be free from restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthful working condition, or other participation in Agency occupational health and safety program activities, or because of the exercise by such employee on behalf of herself or himself or others afforded any right under applicable occupational safety and health law, regulation, or Executive Order. These rights include, among others, the right of an employee to decline to perform her/his assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to

seek effective redress through normal hazard reporting and abatement procedures established in accordance with 29 C.F.R. Part 1960.

B. When an imminent risk exists as defined in § 36.4 A, above, excused leave will be granted when reasonable in view of the circumstances.

§ 36.5 Consistent with good taste and professional standards, informal dress will be permitted to cope with indoor temperature/humidity extremes.

§ 36.6 Administrative leave may be granted when the indoor temperature-humidity levels are combined as follows:

Temperature (Fahrenheit) Relative Humidity

95. 55%

96. 52%

97. 49%

98. 45%

99. 42%

100. 38%

§ 36.7 An employee should promptly report any work-related injury. Information and assistance in filling out reports and making claims shall be provided upon request.

§ 36.8 Management will continue to provide access to health unit services and facilities to care for employees in emergency situations. Employees shall be informed of the services to be provided under Management's health services contracts. Management shall take appropriate steps to assure that these services are fully provided.

§ 36.9 A first-aid kit shall be available in all Management offices.

§ 36.10 Employees will be notified annually of emergency evacuation procedures.

§ 36.11 Health benefit materials distributed by the Office of Personnel Management will be made available to all employees.

§ 36.12 Smoking shall be permitted only in the following areas:

A. Designated smoking areas as agreed to by the parties;

B. Private offices not directly adjacent to general office space;

C. Private offices sufficiently large or with adequate ventilation to preclude smoke from drifting into general office space.

§ 36.13 A current smoker whose private office does not meet the criteria described above may trade offices with an appropriately located non-smoker.

§ 36.14 Management, as well as individual supervisors and employees, will endeavor to recognize and minimize stress inducing working conditions. Employees and supervisors may meet to discuss positive means of addressing stress and its causes.

ARTICLE 37

AWARDS PROCEDURES

§ 37.1 Performance, incentive, honorary, and quality step increase awards decisions will be made by Management in a manner consistent with:

- (a) motivating employees by recognizing and rewarding those who attain high levels of performance; and
- (b) supporting and enhancing Management and national goals.

§ 37.2 Performance Awards and Quality Step Increases

A. Performance awards and quality step increases shall be based on the employee's rating of record for the current appraisal period for which performance awards are being paid. Decisions on these awards will be made and implemented promptly following the close of the annual rating cycle.

B. A quality step increase (QSI) is synonymous with the term "step increase" and is defined as an increase in an employee's rate of basic pay from one step of the grade of her/his position to the next higher step of the grade in accordance with 5 U.S.C. § 5336.

C. The purpose of a QSI is to recognize outstanding performance by granting faster than normal step increases.

D. A QSI may be granted only to an employee who receives a rating of record at level 5 (Outstanding) as defined at 5 C.F.R. § 430.204, and who has not received a QSI within the previous 52 consecutive calendar weeks.

§ 37.3 Superior Accomplishment Awards

A. For the purposes of this section, the terms "award, superior accomplishment, contribution, intangible benefits,; non-monetary award, special act or service, superior accomplishment award, and tangible benefits" are as defined at 5 C.F.R. § 451.103.

B. Superior accomplishment awards programs shall provide for:

- (i) the granting of recognition commensurate with the value of the contribution to the Government; and
- (ii) obtaining maximum benefits for the Government, whenever possible, by considering the applicability of employee contributions throughout Government.

C. A superior accomplishment award may be granted alone or in addition to a performance award or quality step increase.

D. A superior accomplishment award may not be used as a substitute for other personnel actions, or as a substitute for pay.

E. A contribution may serve as the basis for a superior accomplishment award when:

(i) made while the contributor was a Government employee;

(ii) supported by a written justification separate from the employee's rating of record; and

(iii) approved at a level of management higher than that of the individual who recommended use of the suggestion or invention, or recommended the award.

F. Acceptance of a monetary award constitutes an agreement that the use by the Government of the method, or device for which the award is paid, does not form a basis of a further claim against the Government.

§ 37.4 Honorary Awards

A. The Association will be permitted an opportunity to propose criteria and categories of honorary awards, prior to a decision being made as to the establishment or revision, as appropriate, of such criteria and such awards.

B. An individual may receive honorary recognition as often as justified by the individual's contributions.

C. At the discretion of Management, panels may be established on an ad hoc basis to make recommendations to the Executive Director or Chairman on proposed honorary awards when the potential recipients are in competition with one another for the award. The Association will be permitted to appoint an observer to any meeting of the panels insofar as bargaining unit personnel are under consideration. In the event the observer is a subject of the panel's deliberations, he or she will be replaced by an alternate observer designated by the Association. The final decision on any award recommendation or nomination is reserved to the appropriate level of Management.

§ 37.5 Management will endeavor to provide for:

A. adequate funding of a monetary awards program;

B. adequate staffing and support services to assure prompt action on awards recommendations;

C. effective promotion and publicity of the awards programs;

D. dissemination of awards program information to all employees;

E. the establishment of methods and procedures to evaluate periodically the effectiveness of the awards - programs; and,

F. the implementation of needed improvements.

§ 37.6 An award shall be given due weight in considering and processing employee promotion actions.

§ 37.7 The Association will be provided semi-annual reports of bargaining unit awards upon request. The report will include the names of recipients and type and amount of award where applicable.

§ 37.8 Any Agency awards manual, order, or directive implementing or describing an awards program applicable to unit employees shall be consistent with this Article. The Association shall be provided an opportunity to bargain any new or revised awards procedures prior to the implementation of such procedures.

ARTICLE 38

MISCELLANEOUS

§ 38.1 The parties may make available to employees information concerning the availability of child care programs in areas served by Agency personnel.

§ 38.2 The phrases "to the extent practicable" and "when practicable" shall be construed to require Management to reasonably act to achieve the desired result unless to do so would unduly interfere with the Agency's mission.

§ 38.3 The word "may" shall be construed as permissive and nonrestrictive.

§ 38.4 Unless otherwise specified, the word "employee" means an employee in the bargaining unit for which the Association is the certified exclusive representative under 5 U.S.C. Chapter 71.

§ 38.5 "Day" means calendar day unless otherwise specified.

§ 38.6 A time period ending on a week-end or Federal holiday shall be extended to the next work day.

§ 38.7 Time periods or limits may be waived or modified by mutual consent of Management and the Association.

§ 38.8 "Consideration" means full, fair, and impartial consideration.

ARTICLE 39

DURATION, RENEWAL, AND TERMINATION

§ 39.1

A. This Agreement shall take effect sixty days following execution by the parties and shall remain in effect for two years. Thereafter, it will be renewed for one year periods unless either party serves written notice, not more than sixty days or less than thirty days prior to the expiration date, of its desire to amend, modify, or renegotiate this Agreement.

B. In the event of the expiration of this Agreement, those provisions concerning matters over which Management was required to bargain shall continue to bind the Agency, absent an express agreement to the contrary or a modification of those provisions in a manner consistent with law. Neither party, however, is required, upon this agreement's expiration, to continue adherence to provisions concerning matters which are negotiable only at the election of either party. Either party has the right unilaterally to discontinue the practice embodied in a provision which is negotiable only at the Agency's election under 5 U.S.C. § 7106(b)(1) or which is outside the scope of required bargaining under law.

§ 39.2

A. A past practice or procedure consistent with this Agreement shall be considered a condition of employment and maintained and continued during the term of this Agreement unless otherwise agreed by Management and the Association. This shall not infringe upon reserved Management rights when exercised in accordance with Article 6.

B. For this Agreement, practices or procedures followed by employees become conditions of employment only when:

- (1) known to Management at the national or local level, as appropriate;
- (2) the appropriate Management official acquiesces; and
- (3) such practice continues for a significant length of time.

ARTICLE 40

DUES WITHHOLDING

§ 40.1 This establishes procedures covering deduction of dues from the pay of members of the Association when authorized by written assignment.

§ 40.2 This Article is subject to and governed by 5 U.S.C. 7115, and by regulations issued by the Office of Personnel Management (5 C.F.R. §§ 550.301, 550.311, 550.312, 550.321, and 550.322).

§ 40.3 Any employee who is a member in good standing of the Association may authorize an allotment to cover the regular and periodic dues for membership provided:

- a. the employee has voluntarily completed SF-1187, "Request for Payroll Deduction for Labor Organization Dues", and
- b. the employee is employed in an office for which the Association has exclusive recognition.

§ 40.4 The President or other authorized official of the Association shall complete the required certification on the SF-1187 and submit the form to the Division of Personnel. The Association's certifying officer shall ensure that the employee is a member in good standing of the Association and employed within the appropriate office for which the Association has jurisdiction.

§ 40.5 The Division of Personnel shall certify the employee's eligibility for dues withholding and, within five work days after receipt, transmit the SF-1187 to the National Finance Center (NFC) of the U.S. Department of Agriculture. The NFC will process the dues deduction effective as of the beginning of the first full pay period after NFC receives the SF-1187.

§ 40.6 Deductions will be made each pay period by the NFC and remittances will be made promptly each pay period to a person to be designated by the Association. The NFC shall also promptly forward to the Association a listing showing the names of members for whom deductions were made and the amount of each deduction, the total number of members for whom dues were withheld, and the total amount withheld.

§ 40.7 The amount of dues certified on the SF-1187 by the certifying Association official shall be the amount of regular dues. If there should be any change in the dues structure, the Association shall notify the Division of Personnel. If the change is the same for all members, a blanket authorization may be used. The blanket authorization shall include the new amount of dues to be withheld and the names of the Association members. The Division of Personnel shall promptly forward the authorization to the NFC. The change shall be effected at the beginning of the first full pay period after the certification is received by the NFC.

§ 40.8 The Division of Personnel will terminate a dues withholding allotment in any of the following circumstances:

- a. when the employee is suspended or expelled from membership in the Association;
- b. when the employee is no longer in the bargaining unit;
- c. when the Association loses its exclusive recognition; or
- d. when the employee files a written revocation of the authorization of allotment with the Division of Personnel; provided, however, that any such revocation will not be effective until the first pay period following September 1 of any year, provided that the revocation is received by the Division of Personnel on or before August 15 of each year, and provided that the employee verifies that he/she has had Association dues withheld for more than one year. The employee's written revocation may be on SF-1188, "Cancellation of Payroll Deduction for Labor Organization Dues", or by memorandum in duplicate.

§ 40.9 The Division of Personnel and employee members of the Association have a mutual responsibility to assure timely revocation of an employee's allotment for Association dues when the employee is promoted or assigned to a position not included in the bargaining unit represented by the Association. If the employee fails to notify the Office of Personnel that he/she is no longer in the bargaining unit and the dues allotments continue, a retroactive recovery of dues paid to the Association shall not be made, nor shall a refund be made to the employee.

APPENDIX 1

GRIEVANCE FORMS

Grievance Form (Step 1)

This form is to be presented to the employee's immediate supervisor upon completion. A grievance common to two or more employees with different supervisors may be initiated at the first common level of supervision with a copy to the immediate supervisors. Use of this form is optional so long as the required information is provided in writing.

Grievant

Date

Association Representative

Meeting Requested (Check One)

Yes

No

Factual Basis

Contractual or Legal Authority Violated

Remedy Sought

Employee Signature

Association Representative

Grievance Form (Step 2)

A step 2 appeal shall be filed with the person described in the Step 1 decision or, if none is specified, with the General Counsel.

Attach a copy of the Step 1 grievance and Management’s response, if any.

Grievant

Date

Information or Argument to be Considered at Step 2

Remedy Sought (if different from Step 1)

Place of Filing at Step 2

APPENDIX 2

MEMORANDUM OF UNDERSTANDING - AWS

Attendance and Leave Manual

The MSPB and the MSPB Professional Association agree that the Memorandum of Understanding on Alternative Work Schedules, dated August 14, 1986, is superceded by the Attendance and Leave Manual, MSPB Order 1445.22 (May 1, 1996).

For the Professional
Association

/s/ 5/26/96

First Vice President Date

For the MSPB

/s/ 5/29/96

Chief of Staff Date

Alternative Work Schedules (AWS)

(Superceded by the Above)

§ 1 Alternative Work Schedules in the bargaining unit shall be administered in accordance with this Memorandum of Understanding (MOU) and in accordance with the Attendance and Leave Manual, Chapter 9, Alternative Work Schedules, Transmittal No. 1445.4, dated July 30, 1986 (the manual) insofar as the manual addresses unit conditions of employment. To the extent the manual may vary from this MOU the latter governs.

§ 2 Modifications to the manual

A. Paragraph 1 a and 1 c, at p.1 of the manual, are amended to provide:

Purpose

This is intended to afford employees an opportunity for flexibility in the hours and days which they must be present for work, subject to the general limitations prescribed herein to ensure that the duties and requirements of the employees' positions are fulfilled.

B. Paragraph 1 e (1), at p.1 of the manual, addressing employee responsibilities, is amended at the second subparagraph to provide:

Individual employees are responsible and accountable for managing their schedules so that the actual time accounted for in each pay period equals the number of hours in their Basic Work Requirement (BWR).

C. Paragraph 1 f (2), Basic Work Requirement (BWR), at pp.2-3 of the manual, is amended to provide:

The BWR is the number of hours an employee is required to account for within a defined unit of time. Depending on the type of schedule approved, an employee may be required to account for a daily BWR of 8 hours, a weekly BWR of 40 hours, or a biweekly BWR of 80 hours.

Employees may account for their BWR through hours worked, leave, compensatory time, or, where appropriate, credit hours.

Employees are entitled to the equivalent of two 15-minute breaks to be equally divided between the morning and the afternoon. These breaks are on paid time and are thus considered part of the BWR. Paid breaks may not be appended to lunch breaks or leave.

D. Paragraph 1 f (5) (b), Mid-Day Flex, at p.3 of the manual, is amended to provide:

A flexible schedule employee may be absent during the core period for a mid-day break of up to one hour, including the 30 minute lunch break, without advance notice and approval. Supervisors may approve an employee's request for a longer absence during core time; the approval may be on-going. Employees using the mid-day flex remain accountable for their BWR. For employees on a variable day, variable week, or maxiflex schedule, time taken in excess of thirty minutes on a mid-day flex may be accounted for by lengthening the same work day or another work day, and/or by leave, compensatory time, or credit hours. A mid-day flex is not available to employees on a compressed (fixed) schedule.

[The first two sentences of this change shall be effective only when and in the event the Board amends the manual to the same effect]

E. Paragraph 1 f (6), "Credit Hours", at p.4 of the manual, together with the similar language in paragraph 3 a (2) and c, "Earning/Using Credit Hours", at the first and second subparagraphs, at p.7 of the manual, are amended to provide as follows:

i. By definition, credit hours can only be earned by an employee on a flexible schedule. In approving a flexible schedule, a supervisor may give ongoing permission for the earning of credit hours. In addition, approval to earn credit hours may be provided with reference to specific circumstances, in advance of the event or, if not possible, as promptly thereafter as practicable. The formality or informality of the approval process is left to the discretion of the supervisor, subject to the criteria described at paragraph 2 c of the manual.

ii. For employees on schedules permitting accrual of credit hours, time worked between 6:00 a.m. and 7:00 p.m. Monday through Friday which is in excess of the designated BWR (i.e., daily, weekly, or bi-weekly BWR) shall be recorded at the end of the pay period in increments of 30 minutes only, rounded down to the nearest 30 minute increment. Time lost in rounding down shall be forfeited.

F. Paragraph 3 a (2), “Round Down Daily” Rule, at p.7 of the manual, is amended to provide:

The “Round Down Daily” rule requires, with respect to recording work performed on a daily basis, rounding down to the nearest quarter hour increment. Rounding up is not permitted. For example, an employee on a maxiflex schedule who works 8 hours and 25 minutes on a given day would “round down” to 8 hours and 15 minutes and; record 8 and one-quarter hours as the amount of work performed on that day.

G. Paragraph 3 b, at p.7 of the manual, is supplemented to provide:

In approving flexible schedules, supervisors, in their discretion, may give ongoing permission for employees to work, irregularly, days in excess of 10 hours under the following circumstances:

1. maintaining timeliness of case processing;
2. work on priority projects;
3. finishing work-in-progress in anticipation of leave;
4. adjusting to a holiday within the payperiod; or
5. any other appropriate reason.

Where the past practice has been to permit the irregular workdays, new approval need not be sought.

H. Paragraph 3 d (2), at p.8 of the manual, addressing holiday hours for flexible schedule employees, is amended at the first sentence to provide that full-time flexible schedule employees are credited with 8 hours toward their BWR upon the occurrence of a holiday.

§ 3 When employees are required to submit their request for AWS approval on the Board-prepared form (figure 9-3 of the manual), they may request on-going approval for

earning credit hours or for working irregular days in excess of 10 hours by so annotating the form at the space provided for "Other Information".

§ 4 Resolution of scheduling conflicts shall be in accordance with criteria negotiated by the office head and the chapter representative (such criteria may be, e.g., office seniority, a rotation, lottery, etc.)

§ 5 Time-Accounting

A. Employees on a flexible schedule shall use one of the following time-accounting procedures, as determined by the office head:

1. an honor system, certifying hours worked;
2. individual time sheets, maintained by the employee, showing arrival and departure times; or
3. daily seriatim sheets, showing employee arrival and departure times in chronological sequence.

B. Adoption of any time accounting system other than as described above shall be preceded by notice to the chapter representative and an opportunity to bargain any negotiable issues.

§ 6 A. In the event the Board determines that any office(s) is being substantially disrupted in carrying out its functions or is incurring additional costs because of the use of flexible or compressed schedules, the Board may-

- (1) restrict the employees' choice of arrival or departure time,
- (2) restrict the use of credit hours, or
- (3) exclude from such options any employee or group of employees on a temporary or permanent basis.

B. Application of this section in a manner which restricts or affects the AWS options generally available to employees in any office(s) shall be preceded by notice and an opportunity to bargain in accordance with the procedures described at Article 6, Negotiations (as agreed to by the parties on 26 July 1985).

§ 7 Criteria and review

A. Notwithstanding any other provision of this agreement and subject to paragraph C, below, if the Board finds that a particular flexible or compressed schedule under this agreement has had or would have an adverse agency impact, the Board shall promptly determine not to-

- (1) establish such schedule; or
- (2) continue such schedule, if the schedule has already been established, or

(3) continue the schedule, if the schedule has already been established, unless the schedule is appropriately modified to eliminate the adverse agency impact.

B. For the purposes of this section, adverse agency impact. means-

(1) a reduction in productivity;

(2) a diminished level of services furnished to the public by the Board; or

(3) an increase in the cost of Board operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule).

C. The Board retains the right to reopen this MOU to seek termination of any schedule permitted by this MOU in accordance with the procedures described at 5 U.S.C. § 6131.

§ 8 Deviations or modifications from approved schedules may be permitted at a supervisor's discretion, so long as they are consistent with applicable law and regulation. For example, approval may be given a request to work outside the workday band of time.

§ 9 This MOU shall be effective upon signature of the parties, subject to the review provided at 5 U.S.C. § 7114(c).

§ 10 Disputes concerning the interpretation or application of this MOU shall be subject to binding arbitration between the parties.

§ 11 This MOU shall be incorporated into the Master Agreement without change except as agreed otherwise between the parties.

Subscribed in Washington, D.C., 14 August 1986.

For the Board:

For the Association:

/s/

/s/