

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

**AFL-CIO, LOCAL 1923, AND THE EMPLOYEES OF THE NATIONAL
MEDIATION BAORD**

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Preamble

This Agreement is entered into by and between the National Mediation Board (hereinafter referred to as NMB or the Employer) and the American Federation of Government Employees (hereinafter referred to as the Union or AFGE). The parties mutually recognize that the Congress of the United States has expressed public policy concerning labor relations in the Federal Government as follows:

[T]he right of employees to organize, bargain collectively and participate through labor organizations of their own choosing in decisions which affect them, safeguards the public interest, contributes to the effective conduct of the public business, and facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment; and 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 (5 U.S.C. 71). Pursuant to this policy, the parties have agreed upon the various articles hereinafter set forth. This Agreement constitutes a Collective Bargaining Agreement between the NMB and AFGE.

Recognition and Coverage of this Agreement

The AFGE, AFL-CIO, is recognized as the exclusive representative of employees in a nonprofessional unit in accordance with the Certification of Representation WA-RP 80049, approved by the Federal Labor Relations Authority (FLRA) on May 17, 2000. This Agreement covers all employees pursuant to said certification.

Management Rights

Section 1. Statutory Rights

A. Subject to subsection (B) of this section, nothing in this Agreement shall affect the authority of any management official of any agency—

1. to determine the mission, budget, organization, number of employees and internal security practices of the agency; and
 2. in accordance with applicable laws—
- a. to hire, assign, direct, layoff and retain employees in the agency or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
 - b. to assign work, to make determinations with respect to contracting out, and to determine personnel by which agency operations shall be conducted;
 - c. with respect to filling positions, to make selections for appointments from—
 - (1) among properly ranked and certified candidates for promotion; or

(2) any other appropriate source; and

d. to take whatever actions may be necessary to carry out the agency mission during emergencies.

B. Nothing in this section shall preclude any agency and any labor organization from negotiating—

1. at the election of the agency, on the numbers, types and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods and means of performing work;
2. procedures which Management officials of the agency will observe in exercising any authority under this section; or
3. appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such Management officials.

Article 1—Governing Laws and Regulations

Section 1. Relationships to Laws and Government-Wide Rules and Regulations

In the NMB, of all matters covered by this Agreement, officials and employees shall be governed by existing or future laws and existing government-wide rules and regulations, as defined in 5 U.S.C. 71, and by subsequently enacted government-wide rules and regulations implementing 5 U.S.C. 2302.

Section 2. Past Practices

It is agreed and understood that any prior benefits and practices and understandings which were in effect on the effective date of this Agreement and which are not specifically covered by this Agreement shall not be changed except in accordance with 5 U.S.C. 71.

Article 2—Union Rights and Responsibilities

In all matters relating to personnel policies, practices and other conditions of employment, the parties will have due regard for the obligations imposed by 5 U.S.C. 71 and this Agreement.

The NMB shall not restrain, interfere with, or coerce representatives of the Union in the exercise of their rights under 5 U.S.C. 71 and this Agreement.

The Union has the right to refuse to represent any bargaining unit employee in matters not covered by the negotiated Agreement, e.g., statutory appeals of adverse actions and Equal Employment Opportunity (EEO) complaints.

Article 3—Employee Rights

Section 1. Right to Unionism

To the extent provided by law, each employee shall have the right to join or assist the Union, or to refrain from such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under law, such right includes the right:

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

–to engage in collective bargaining with respect to conditions of employment through representatives.

Section 2. Personal Rights

All employees shall be treated fairly and equitably in all aspects of personnel management and without regard to political affiliation, race, color, religion, national origin, sex, sexual orientation, marital status, age or disabling condition, and with proper regard and protection of their privacy and constitutional rights. The Parties agree that in the interest of maintaining a congenial work environment, both supervisors and employees will deal with each other with courtesy, dignity, and respect. To that end, all NMB employees should refrain from coercive, intimidating, loud or abusive behavior.

The Employer agrees to annually inform all bargaining unit employees of their rights under 5 U.S.C. 7114(a)(2)(B) through an e-mail posting to all bargaining unit members.

The NMB will make every reasonable effort to continue existing arrangements/ accommodations for the secure storage of appropriate personal belongings. Each employee and her/his supervisor will, together, designate an area within the employees work space that may be considered "private." Any search of the accommodations designated as private must be for legitimate reasons related to security, criminal activity, or safety, with the employee and a Union representative present, if requested. When new furniture is installed, the furniture will contain lockable, secure space for the storage of personal belongings. Employees will exercise reasonable care to protect their personal belongings and will minimize the number of personal items brought to the office. Upon request, management will instruct employees on filing a claim for reimbursement under 31 U.S.C. 3721 and will make forms available in case of loss.

The NMB will make every reasonable effort to conduct discussions of a potentially sensitive nature between supervisors and employees in private.

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

All employees will be introduced to the staff during the first week they report for duty.

An employee's decision to resign or retire (if eligible for optional retirement) shall be made freely and in accordance with prevailing regulations. An employee may withdraw her/his resignation prior to the effective date, unless Management has assigned another employee to the position or made a binding job offer to an applicant.

An employee facing removal or termination on account of unsatisfactory performance or bad conduct may elect to resign in lieu of removal or termination at any time prior to the effective date.

The NMB will provide retirement planning information to bargaining unit employees who are within 12 months of retirement eligibility, upon request. The NMB encourages the employee to use the appropriate OPM web sites to gain information about retirement planning and to use the retirement calculator.

Credible complaints to management about an employee from members of the public or co-workers shall be brought to the attention of the employee as soon as possible. Any observation or complaint regarding an employee's conduct or performance that may be used to propose discipline or a performance-based action in accordance with this Agreement will be brought to the attention of the employee as soon as possible after the event.

Employees shall have the right to direct and fully pursue their private lives, personal welfare, and personal beliefs without interference, coercion or discrimination at the worksite, and without imposition of discipline or adverse action unless such pursuit interferes with the mission and efficiency of service. Management shall have the right, in keeping with relevant law, to determine when such activities interfere with the mission and efficiency of the service.

Management may not discipline an employee who refuses to obey an order that is found to be unlawful or illegal.

In accordance with existing statutes and regulations, employees have the right to present their personal views to Congress, the Executive Branch or other authorities without fear of penalty or reprisal. Employees making such presentations shall make it clear that they are presenting their personal views and are not speaking on behalf of the agency.

Section 3. Whistle-Blower Protection

Employees shall be protected against reprisal for the lawful disclosure of information, which the employee reasonably believes evidences a violation of law, rule or regulation, or evidences mismanagement, a waste of funds, an abuse of authority, or a danger to health or safety.

Section 4. Official Records and Files in General

Personnel records shall be collected, maintained, or retained strictly in accordance with law, government-wide regulations, and this Agreement. Except for such disclosures permitted or required by law, all personnel records are confidential, shall be viewed or disseminated by officials/employees only with a legitimate administrative need to know, and must be retained in a secure location.

All policies on the maintenance of personnel record keeping standards and special safeguards for automated and/or electronic records will be followed in accordance with applicable law and regulation. Personnel records for NMB employees shall include only:

A. Official Personnel Folder: Official Personnel Folders (OPF) are the property of the Office of Personnel Management. While a person is employed by the NMB, the OPF for the employee is maintained by the General Services Administration, which provides personnel and payroll services to the NMB under contract.

B. Employee Performance Files: Employee Performance Files (EPF) contain performance ratings, the performance plan on which the rating was based and any necessary supporting documents. EPF files are maintained in the Administrative Office. Summary information is transmitted to GSA yearly, and the four most recent performance evaluations are maintained in the EPF as required by regulation.

C. Unofficial Personnel File [Working Personnel File]: Unofficial Personnel Files (UPF) are maintained by the Administrative Office and contain copies of personnel action requests and similar documents sent to GSA for processing and notices of personnel actions taken on NMB's behalf by GSA. Employee medical information may be included in a separate UPF when an employee participates in an Agency assistance or counseling program, or when an employee undergoes a medical examination to support her or his ability to work. EMF records are maintained in the Administrative Office.

D. Temporary Files: Temporary Files (TF) are maintained securely by managers or HR when an employee is undergoing discipline or is under a performance improvement plan. Copies are retained and placed in the OPF or UPF only when an adverse action results and only to the extent and for the period required by regulation.

E. Supervisory Convenience Files: The supervisor may keep working files for performance management purposes, copies of individual development plans, and such other files that are needed for day-to-day employee management. These files are purged as soon as the temporary need for them no longer exists.

Section 5. Official Personnel Folder and Employee Files

Except as specifically authorized by this Agreement, the employee files listed in Section 4 are the only authorized files for personnel records, which may be maintained by a supervisor other than the OPF.

An employee has the right to be informed about records that are maintained about

him or her and are filed in a system of records that is personally identifiable. Employees shall be advised of the nature and purpose of the OPF and employee files, and their locations. The NMB will provide an annual notice to each employee regarding these rights.

Employees shall be notified and given a photocopy of any material placed in the OPF or employee files normally within three (3) working days. Employees should acknowledge receipt by signature except when documents are standard personnel action forms. It is understood such acknowledgment does not constitute agreement with the contents. Employees and/or the authorized representative may review their OPF and/or employee files and request a copy of any material therein.

Employees and/or their authorized representatives shall have the right and be granted a reasonable amount of time to examine any of their personnel records on duty time in the presence of a management official. The employee shall have the right to prepare and enter on the record, while on duty status, a response to material placed in each record.

Employees will be allowed to enter into their OPF and employee files additional information or documents, within reason, that are appropriate, relevant, work-related and that are not in violation of law or government-wide rules or regulations. Access to personnel records of the employee by the employee and/or the authorized representative normally shall be granted within two (2) working days of the request if such records are maintained on the premises in which the employee is located and are immediately available. If the records are not so maintained as available, the NMB will initiate prompt action to arrange for the employee and/or representative to view the record as soon as possible.

The employee files will be screened and purged, normally in February, but in any case no later than March of each year and outdated material shall be removed.

Records shall be retained only as long as such administrative need exists, but normally no longer than one (1) year unless otherwise indicated in this article. Personal notes pertaining to an employee not qualifying as a system of records under the Privacy Act may only be kept and maintained by and for the personal use of the management official who wrote them. Such notes will not be disclosed to anyone. These notes must be maintained in a secure location. Personal notes shown or circulated to anyone must be maintained in accordance with this Section. These personal notes or memory joggers will not be used to circumvent timely disclosure to an employee, nor may they be used to retain information that should properly be contained in a system of records such as the employee files. The personal notes will be kept or destroyed as the manager who wrote them sees fit. If any of these conditions are broken, these personal notes are no longer mere extensions of the supervisor memory and become records subject to the Privacy Act.

If a memory jogger is maintained in electronic form, such a record will only be kept on a floppy disk, which is solely under the control of the management official who created it. The disk will be locked in a secure storage area with access limited to

the management official who created the record. After 12 months, information contained in a memory jogger must be reduced to writing and put into a system of records or it cannot be used in an administrative action taken against an employee.

Other than records that are exempt, any record that has not been disclosed to an employee on a timely basis and placed in any file authorized by law, government-wide regulations and this contract, cannot be used in either a disciplinary or adverse action or performance-based actions.

Section 6. Representational Rights

If the employee wishes to discuss a problem or potential grievance with a Union representative, the employee shall have the right to contact and meet with the Union representative on duty time. The employee will be released from duties to contact and meet with the Union representative when he/she requests to exercise this right, unless there is a pressing operational exigency. When the manager is aware that a meeting may result in disciplinary action, the manager will inform the employee of the general purpose of the meeting and will inform the employee of their right to have a Union representative present if he/she chooses. In addition, if the employee reasonably believes that the event may result in a disciplinary action against him/her, he/she may request union representation. Once an employee chooses to exercise this right by requesting representation, no further questioning or action will take place until the employee's representative is present, provided no unreasonable delay occurs. However, this does not apply to run-of-the-mill work conversations, including routine discussions about performance of work, counseling about career development, or similar discussions.

Consistent with 5 U.S.C. 71, the Employer will not communicate directly with employees regarding conditions of employment in a manner, which will improperly bypass the Union under law. The NMB will provide the Union with reasonable advance written notice of written personnel surveys concerning conditions of employment that involve bargaining unit employees when such surveys are initiated at the NMB. The NMB will also provide the Union with an advance written copy of survey results as soon as possible. This section is not intended to terminate any Union involvement in such surveys that may exist in accordance with 5 U.S. C. 71. It is further understood that employee surveys will conform to the requirements of 5 U.S.C. 71.

Consistent with 5 U.S.C. 7114(a)(2)(A), as the exclusive representative of unit employees, the Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the NMB and one or more employees or their representatives concerning any grievance, formal EEO complaint settlement discussions or any personnel policy or practices or other general condition of employment. The NMB will give the Union sufficient advance notice to exercise its rights under this section.

The attendance of the designated Union representative will be acknowledged by the NMB at the start of such formal discussions. The Union's representative will be given the opportunity to ask questions relative to the matter being discussed on behalf of the employees, and may make a brief statement as to the Union's

position on the matter under discussion. The parties agree to maintain professional decorum throughout the discussion. Management is under no obligation to delay the start of the meeting if the Union representative is not present. When an employee is being interviewed by an NMB investigative official and criminal charges against the employee are being considered, the employee will be informed that criminal misconduct is involved and will be advised of his/her right to be represented by an attorney and/or the Union at the interview and the right to remain silent. In conducting investigations regarding a non-criminal matter that may result in an adverse determination about an employee; rights, benefits, and privileges, the parties are reminded that the Privacy Act requires that, to the extent practicable, information should be initially collected directly from the subject employee.

Confidentiality in Investigations

The Parties recognize the need for confidentiality during investigations of sensitive issues.

A copy of the statement of the employee will be routinely given to the employee. When an employee becomes the subject of an investigation, the employee will be notified when such investigation is closed.

Last Chance Agreement

When Management has determined that an employee is consistently underperforming or continuing to engage in conduct for which discipline is warranted, and adverse action has been proposed, the employee may request that the Agency consider a Last Chance Agreement. The Last Chance Agreement will provide the conditions which the employee must meet, if the Agency is to defer taking the adverse action. If the conditions are met and maintained for a specified period of time, the Agency will remove the adverse information from the record and not consider it in any future action. The Union will be provided notice and the right to be present at meetings where Last Chance Agreements are discussed. The Union has the right to be present during questioning of potential bargaining unit witnesses for any third party hearing. The NMB will encourage law enforcement officials to pursue any alleged violation of 18 U.S.C. 1114 relative to workplace violence in those cases where the NMB determines such action is warranted.

Section 7. Voluntary Activities

The Parties agree that employee participation in the Combined Federal Campaign, Blood Donor Drives, Bond campaigns and other worthy projects will be on a voluntary basis. This does not preclude giving general publicity and encouragement to employees to contribute.

The Employer will not require or coerce employees to invest their money, donate to charity, or participate in these activities. Participation or nonparticipation will not advantage or disadvantage employees.

Employees seeking to participate in volunteer activities during basic working hours

may be granted either annual leave, leave without pay, or compensatory time off. Supervisors are encouraged to make appropriate use of leave flexibility while giving due consideration to the effect of the employee's absence or change in duty schedule on work operations and productivity. Supervisors may grant comp time for performing an equal amount of time in irregular or occasional overtime work. Granting of excused absence (administrative leave) may be authorized for officially sponsored or sanctioned community service activities by the NMB's Chief of Staff.

Section 8. Outside Employment

Employees are advised that regulations require that some outside employment requests must be submitted in writing to management for approval in advance. The NMB agrees to continue its policy of fair and equitable application of appropriate regulations in this area. Normally the NMB will approve or disapprove any request within 30 workdays of the NMB's receipt of the request. The Employer agrees to include a statement of its reason for disapproving any such request. If the NMB denies the outside employment request, the employee cannot work in the outside job. If an employee wishes to dispute the NMB's initial disapproval or later rejection of outside employment under this Article, the employee may file a second step grievance directly with the official if he/she does not feel that Section 1 of this Article has properly been applied. Such a grievance must be filed within five (5) workdays of the NMB's initial disapproval or later rejection of the outside employment. Such a grievance will be treated exactly as if it had been processed through this Agreement's grievance procedure, and is now at the second step of the procedure.

Section 9. Timely and Proper Compensation

The Employer will make every effort to ensure that employees receive their paycheck/full compensation due (amount that was due based on payroll transmission) on the established payday. The Employer will make every effort to ensure that employees receive their paycheck/full compensation due, bonds and W-2 forms at the address or electronic site designated by the employees, in accordance with Treasury Department rules and regulations. Management will distribute the employees' earnings and leave statements, to the employee, on payday or as soon thereafter as reasonably possible. Employees are responsible for reviewing their earnings and leave statements and notifying their supervisors of any unexplained changes.

When a bargaining unit employee's full compensation due is not received on the established payday, the NMB will, at the employee's request, authorize an emergency payment.

Employees are responsible for arranging for the timely repayment of overpayments. Where employees have been overpaid, the Employer will advise employees of the procedures available and provide the necessary forms for filing a request for waiver of overpayments in accordance with the provisions of the Debt Collection Act.

The parties agree to the following conditions and procedures for replacement

of full-compensation-due payment (amount that was due based on payroll transmission) when such payment is not received.

The NMB may, at the employee's request, authorize an emergency payment to an employee when his/her full compensation due is not received on the established payday.

Emergency employee payments cannot be an advance of salary, but can only be for the amount earned for a pay period which was not paid to the employee on the established payday.

Emergency employee payment can be issued if the employee is not paid on scheduled payday due to loss, an administrative error, or to delay in processing.

An emergency employee payment will not be issued in the following situations:

- employee is already delinquent repaying a prior debt (e.g., outstanding travel advance, salary overpayment, etc.);

- employee has resigned or transferred out of NMB.

At the time the emergency payment is issued, the NMB will obtain a promissory repayment agreement from the employee who is missing his/her full compensation and to whom the emergency payment is made.

The repayment agreement will state:

- that the employee has not received or deposited the payment;
- that the employee is liable to repay the emergency payment to the Government within three (3) days of receipt of a salary payment, i.e., the original payment or any replacement salary payment, whichever is received first;

- that in the event both an original payment and a replacement payment are received, the employee will be responsible for returning to the Payroll Liaison Staff, whichever payment is received later;
- that the employee has an affirmative responsibility to notify the Payroll Liaison Staff as soon as possible, i.e., normally within two (2) working days of receipt of the original payment and/or any replacement payment;

- that the employee will be charged interest, administrative fees and late penalty charges as provided under 45 CFR Part 30 if it is necessary for Central Payroll to recover the outstanding emergency payment.

An emergency employee payment will be issued not later than 24 hours following the standard payday (Wednesday) on which the salary payment was not received by the employee.

Section 10. Statutory Requirements

Personnel management in the NMB shall continue to be conducted in accordance with the provisions of 5 U.S.C. 2301, Merit System Principles, and 5 U.S.C. 2302, Prohibited Personnel Practices. These sections will be made available to any employee upon request.

Article 4—Negotiations During the Term of the Agreement on Management Initiated Changes

Section 1. General

The NMB will provide the Union reasonable advance notice prior to implementation of changes affecting conditions of employment subject to bargaining under 5 U.S.C. 71. Upon notice from the NMB of a proposed change, the designated Union representative will notify the designated Management representative of its desire to consult and/or negotiate on the change within the time frame set for the level of negotiations involved. The Union will not be required to submit written proposals in advance of the start of the bargaining period, but agrees to make good faith efforts to submit proposals, in part or in whole, prior to arriving at the bargaining site, whenever practicable.

Bargaining will begin as soon as possible, and not later than the time frame set for the parties involved. All issues not resolved by direct negotiation between the Union and Management may be referred to the Federal Service Impasses Panel for resolution under its rules.

The Parties recognize that the time frames set in this Agreement to initiate bargaining are based upon normal circumstances and may occasionally need to be shortened to meet compelling operational needs. The NMB agrees not to set artificial deadlines for implementing changes in order to circumvent the normal time frames. The Union may request and promptly receive a briefing on a proposed management change. These briefings should include an explanation of the following:

- a description of the change;
- an explanation of how this change will be implemented;
- an explanation of why the proposed change is necessary; and
- the proposed implementation date.

The Parties agree that this should enable them to identify the major issues to be bargained and facilitate the negotiation process.

Section 2. Ground Rules

The Union will request consultations and/or bargaining within 10 workdays after the date of receipt of the notice of change. If the request is made by mail, an additional five (5) calendar days will be allowed within which the request must be received by the NMB.

When bargaining is requested, official time will be authorized for three (3) employee Union representatives, or a larger number if needed to achieve parity with the number of individuals designated as representing the NMB for such purposes. Official time allowances will be consistent with 5 U.S.C. 7131(a) and this Agreement.

Bargaining will begin no later than 30 calendar days after the date of receipt of the notice of change.

Section 3. Ground Rules–Management Initiated Changes

A. Purpose

The following ground rules apply to all midterm bargaining entered into as a result of Management-initiated changes and any corresponding obligation to bargain over such changes under 5 U.S.C. 71 of the statute. These ground rules supplement the procedure set forth in this Agreement, and apply to all levels of negotiations as delegated in Articles 4 and 30. Absent mutual consent, no other ground rules will be negotiated at any level.

B. Briefing Sessions

Either Party may request a briefing session to explore or explain the change and its impact on unit employees. This session may be scheduled in advance of the start of actual negotiations, or as a part of the time allotted for face-to face consultations and/or bargaining. Where the negotiators are geographically separated, the Parties will normally use telephone capabilities.

C. Arrangements

Negotiations will be held in a suitable meeting room provided by the Employer at a site determined by the Employer.

The Employer will also provide the Union negotiating team with customary and routine services, e.g., adequate office supplies and access to adequate meeting space, computer, telephone, and photocopy equipment.

The date negotiations will begin and the daily schedule will be established through consultation.

Alternates may substitute for committee members. Such alternates will be entrusted with the right to speak for and to bind the members for whom they substitute.

D. Routine

During negotiations, the chief negotiator for each party will signify agreement on each section by initialing the agreed-upon section. The chief negotiator for each Party will retain his/her copies and initial the other Party's copy. This will not preclude the parties from reconsidering or revising any agreed-upon section by mutual consent.

It is agreed that either committee requesting a caucus will leave the negotiation room to caucus at a suitable site provided by the Employer. There is no limit on the number of caucuses which, may be held, but each party will make every effort to restrict the number and length of caucuses.

The Agreement shall not be completed and finalized until all proposals have been disposed of by mutual consent. Negotiation disputes, including questions of negotiability and impasse items, will be processed in a manner consistent with 5 U.S.C. 71 and implementing regulations. This will not serve as a bar to the Parties concluding by mutual consent a general agreement on those items, which have been or remain to be negotiated.

E. Maintenance of Records

It is agreed that no official transcript will be made of the negotiation proceedings. However, each Party may make and keep its own notes and records. The notes and records are privileged and each Party will determine whether and when to disclose them to any other party.

The negotiation proceedings will not be recorded by means of any tape/electric/electronic-recording device.

F. Authority

Each Party shall be represented at the negotiations at all times by one duly authorized chief negotiator/chief spokesperson who is prepared and authorized to discuss and negotiate on matters subject to negotiations and to sign off on agreements for their respective Party.

G. Reopening/Questions of Negotiability

If any proposal is claimed to be non-negotiable by either Party and is subsequently determined to be negotiable, or the declaring Party withdraws its allegations of non-negotiability, the proposal will, upon request, be reopened within a reasonable period of time. Such request must be made within 60 calendar days. Nothing in this Section will preclude the right of appeal to the appropriate venue.

Any provisions for which agreements have been negotiated, and which the NMB Agency Head subsequently finds to be non-negotiable, may be referred to the FLRA by the Union. Any such negotiated agreement held negotiable by the FLRA will be incorporated into the Agreement. Within a reasonable period after receipt of an FLRA decision sustaining the NMB's determination of non-negotiability, the parties may meet to discuss changes in focus or language which may render the issue negotiable.

All time frames in these ground rules may be modified by mutual consent.

H. Restriction on Waivers

It is understood that no waivers of either Party's rights at any level are authorized by any agent except as specifically and expressly stated by the NMB and the Union

in a written authorization relating to a specific situation.

Section 4. Mid-Term Bargaining

A. Management Changes

Recognizing that the Agreement cannot cover all aspects or provide definitive language on each subject addressed, it is understood that midterm agreements may include bargaining on any subject covered in the Agreement, so long as it does not conflict, interfere with, or impair implementation of the Agreement. However, matters that are excluded from midterm bargaining will be identified within each Article.

B. Union Initiated Mid-Term Bargaining

During the term of this Agreement, the Union may initiate up to three (3) mid-term issues. Bargaining will be subject to the ground rules in this Article.

Article 5—Employee Support Program

Section 1. Background and Rationale

As an organization, the National Mediation Board desires to create a work environment that is supportive and comfortable for everyone, and in which each employee assists in this effort. Notwithstanding everyone's best efforts to create a positive work environment, there may be situations in which problems, questions, or issues arise that hold the potential for conflict or discomfort. When these situations arise, it is generally best for problems to be settled by direct discussion between the individuals involved. For those times when an employee may be uncomfortable addressing a problem directly with another employee or manager, or wishes to pursue an informal process in addition to or instead of a formal process, the Board is making available the NMB Employee Support Program (ESP). The informal, cooperative approach taken through the ESP works parallel to formal dispute resolution systems (e.g., EEO or Union Grievances) and does not diminish or interfere with the formal systems.

Section 2. Organization and Management

The ESP is managed by the Deputy Chief of Staff for Development and Technology who is designated as the Agency's Ombudsman. Other ESP Contacts are listed in the ESP brochure, and can be obtained from the Ombudsman or the NMB EEO Director.

Section 3. Function

Each ESP Contact may serve as a confidential resource for NMB employees helping to resolve work-related issues, problems, and conflicts, and helping to effect positive change by providing upward feedback to senior management on patterns of problems and complaints.

Section 4. Confidentiality and Record Keeping

A. Confidentiality

All meetings with ESP Contacts will be confidential, ensuring that information generally is shared only if the employee indicates that it is appropriate to do so. There are some situations in which the ESP Contacts may not maintain strict confidentiality, such as circumstances under which the ESP Contacts learn of potential physical threats, harassment, etc. Any employee speaking to an ESP Contact will be advised regarding confidentiality guidelines before discussing any issue.

B. Records

No records will be kept by name or specific issue. Records will indicate only the number of times ESP Contacts are approached, and the general nature of the issue involved.

C. Record Sharing

Any ESP records maintained by the NMB will be shared with the Union.

Section 5. Scope

A. ESP Contacts

Each ESP Contact may listen to any employee's concerns, clarify procedures, discuss options, and when requested, act as an intermediary or third party. The ESP Contacts do not advocate for a person—they advocate for a fair process. The ESP Contacts work to promote the NMB's commitment to team building, strengthening relationships among all employees, and building an inclusive workforce. Specifically, the ESP Contacts will:

1. Handle Complaints—

- Hear any question, issue or complaint
- Help people candidly discuss issues and explore options
- Open channels of communication

Work to achieve a fair and equitable resolution

2. Facilitate Obtaining Information—

Make known which processes exist to informally and formally resolve issues, problems or complaints

Help people obtain interpretations of NMB policies

3. Act as Process Advocate—

Recommend possible approaches to resolution

When appropriate, recommend systemic changes to management

B. Relationship to Formal Systems

Time frames for complaints handled under formal systems (e.g., EEO or grievances pursued under this contract) will be frozen until the employee either chooses to leave the ESP process and return to the formal system or a resolution is obtained through the ESP process.

Article 6—Dues Withholding

Section 1. Payroll Deductions

Any employee(s) may have regular and periodic dues, fees and assessments withheld through payroll deductions if the employee voluntarily completes SF-1187, Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues, or its equivalent and has sufficient compensation to cover the amount of the allotment.

Section 2. Union Responsibilities

The Union will inform members of the voluntary nature of dues withholding and of the conditions governing a member's cancellation of dues withholding. The Union will forward any SF-1187, or its equivalent, timely and any SF-1188 or equivalent memorandum, within five (5) calendar days to the appropriate servicing personnel office when such forms or equivalent memoranda are submitted to the Union.

The Union will inform the NMB administrative office of the name of any participating employee on dues check off who has been expelled or ceases to be a member in good standing of the Union as soon as possible.

The Union agrees to inform the NMB administrative office of changes in the following: The title and address of the individual local Union official responsible for certifying on each employee's authorization form the amount of dues to be withheld.

The title and address and/or payee of the individual local Union official to whom remittances are to be made.

Changes in dues amounts in either single or multi-level dues structures. Changes in the amount of allotments over which the Union has control may not be made more than once during a calendar year. Changes in the amount of allotments over which the Union does not have control, may be made when required by an outside party.

The Union will purchase and distribute SF-1187s or their equivalent which includes the following language:

Dues withholding may be revoked by submitting an SF 1188 or its equivalent within a 30 calendar day period prior to the anniversary date of signing indicated on the SF-1187 or its equivalent. If a request for revocation is not submitted within the time frame cited above, the authorization will recycle for additional one year periods on each anniversary of the date a SF-1187 or its equivalent was signed.

Section 3. Management Responsibilities

It is the responsibility of Management to:

Process voluntary allotments of dues in accordance with this article. Dues changes and SF-1187s or equivalent forms will be processed on a timely basis. Input exceptions will be corrected and re-input at the earliest practicable time;

Withhold employee dues on a biweekly basis;

Transmit via an electronic funds transfer to the local allotment designated by the Union in accordance with this article;

The NMB will also provide the Union with a listing of the names of each unit employee for whom a deduction is made during that pay period and the amount withheld.

Upon request from an employee, furnish and process SF-1188s or equivalent forms in accordance with the terms and conditions specified on SF-1187s or equivalent forms and this Agreement. Management will return SF-1188s or equivalent forms not timely filed.

Management will forward to the designated Union representative(s) copies of processed SF-1188s or equivalent forms received directly from members.

Section 4. Effective Dates

Effective dates for dues withholding actions will be as follows:

A. Starting dues withholding beginning of the first pay period after computer acceptance of properly executed form SF-1187s or equivalent.

B. Revocations by bargaining unit employees will be effective on the first full pay period following the employee's anniversary date after computer acceptance of properly executed forms SF-1188. To be effective, forms SF-1188 must be submitted no earlier than 30 days prior to an employee's anniversary date. If Management does not have the employee's original form SF-1187 to establish the anniversary date, the Union will provide a copy from their files.

If the Union does not have a copy, the employee anniversary date shall be the first pay period that dues were actually withheld as shown by the Official Payroll Records. Any form SF-1188 or equivalent received outside the 30-day time frame will be returned. Forms SF 1187 must clearly indicate to the employee that the authorization will recycle on each anniversary date unless timely revocation is received.

C. Termination due to loss of membership in good standing begins the first pay period after computer acceptance of notification.

D. Termination due to separation or movement outside unit of recognition, including temporary reassignment, detail, or promotion of 120 days or more begins the first full pay period after computer acceptance of termination information according to the following guidelines:

- When the position the employee occupies is excluded from the AFGE unit, dues will be terminated only at the request of the employee. Termination will be effective on the first full pay period after the computer acceptance of the termination information. The NMB will inform the Union in writing of the employee's request and of the date that the request will be effectuated.
- An employee on a temporary promotion or a temporary reassignment, or a detail out of the AFGE unit of recognition for 120 days or more, may request that dues withholding be terminated. If the employee makes this request to the NMB in writing (through an SF-1188 or its equivalent), the NMB will inform the Union in writing of the employee request and of the date that the request will be effected. If the employee notifies the Union in writing that he/she would like the NMB to terminate dues withholding, the Union will forward the request to the NMB and the NMB will process the request upon receipt. Upon termination of the temporary promotion, temporary reassignment, or detail and return to the bargaining unit, dues withholding will resume.
- When an employee moves outside the AFGE unit of recognition through permanent promotion or permanent reassignment, the employee may request the termination of the dues withholding at any time. The employee may contact the NMB or the Union to request the termination of dues withholding. If the employee makes this request to the NMB in writing (through an SF-1188 or its equivalent), the NMB will inform the Union in writing of the employee request and of the date that the request will be effected. If the employee notifies the Union in writing that he/she would like the NMB to terminate dues withholding, the Union will forward the request to the NMB and the NMB will process the request upon receipt.

E. Changes in dues amounts. First full pay period after computer acceptance of the change unless a later date is specified by the Union.

F. Upon receipt of an SF-1187 or an SF-1188, the Administrative Office will fax the forms to the Kansas City payroll department. Kansas City will process the payroll deduction via electronic transfer which directly deposits into the bank account designated by AFGE.

Section 5. Disputed Eligibility

When the Employer believes a position subject to dues withholding is no longer eligible for such deduction, the Union will be notified in writing. When a dispute arises concerning the bargaining unit status of an employee on dues withholding, dues withholding shall continue until the matter is resolved.

Article 7—Duration of Agreement

Section 1. Duration of Agreement

This Agreement will remain in full force and effect for four (4) years from its effective date of ratification, December 17, 2002. This Agreement will automatically renew itself from year to year thereafter. However, either Party may give written notice and a list of Articles to the other Party not more than 120 or less than 90 calendar days prior to the expiration date of its intention to reopen, to amend, modify or terminate the Agreement. The parties to the negotiations will determine the date written proposals are to be exchanged. Negotiations shall begin no later than 30 calendar days after these conditions have been met.

Section 2. Reopener

Negotiations during the term of this Agreement to add to, amend or modify this Agreement may be conducted only by mutual consent of the parties.

Article 8—Official Travel

Section 1. Compensation and Travel

The Parties recognize that employees may be required to perform essential travel away from their official duty station. The Parties further agree that such travel should be arranged and scheduled so as to minimize the effect of such travel on employees.

Where it is necessary that travel be performed during non-duty hours, the employee will be paid overtime when such travel constitutes hours of work under 5 U.S.C. or the Fair Labor Standards Act, if applicable. To the maximum extent practicable, time spent in travel status away from an employee's official duty station will be scheduled by the NMB within normal working hours of the traveling employee(s). To this end, the NMB agrees to:

Whenever possible, schedule events to allow employees to travel during their normal duty hours;

Allow an employee to travel on workdays preceding and after an event when travel on the day of an event would be outside the traveling employee's regular duty hours;

Employees retain the right to travel on their own time if they so choose, but are responsible for any additional cost incurred to do so.

Section 2. Change from Per Diem Allowance to Actual Expenses

Advance Authorization. An employee scheduled to travel in an area, for which a per diem allowance is prescribed, may request advance authorization for travel on the basis of actual expenses. Any such request will normally be approved when the supporting justification showing warranted circumstances for the request meet NMB-wide guidelines.

Post Approval. Reimbursement for actual expenses allowable under law and/or government-wide rules and regulations will normally be authorized on a post approval basis if the employee can justify that prudent expenses required by the ordered travel exceeds (as defined by NMB-wide guidelines) the prescribed per diem rate. This provision applies only to travel involving assignments of 30 calendar days or less.

While employees are assigned to training or duty away from their regular duty station, they may elect to return home during non-workdays or non-work hours. In such cases, they will be reimbursed for travel expenses not to exceed the amount reimbursable had employees remained at the temporary duty station. However, if there is a personal or family emergency, such as the death or serious illness of a member of the traveling employee family, or a catastrophic occurrence or impending natural disaster, such as fire or flood which directly affects the traveling employee's home, requiring the employee to return home, the NMB will pay the reasonable costs (including transportation and per diem) of the traveling employee returning home.

A copy of official NMB travel policy will be made available for employees to review.

When an employee in travel status is injured or becomes ill and is expected to remain so for at least five days, the NMB will reimburse the employee for expenses incurred in returning to the employee's normal duty station with approval of the employee's supervisor. A Medical Certificate may be required. Allowances for expenses will be paid in accordance with applicable Federal Travel Regulations.

Section 3. Continuation of Approved Travel Expenses

Employees who are unable to arrive at, or return from their destination during regular duty hours will be reimbursed for authorized travel expenses provided said inability to arrive or return is due to arduous travel conditions beyond the employee's control resulting from natural calamity, unavailability of transportation, or severe weather.

Section 4. Advancement of Expenses

Employees required to travel shall have the option of requesting a travel advance. Such requests shall be filed by the employee as soon as possible and processed by the NMB as expeditiously as possible. Normally, the NMB will not require an employee to travel overnight prior to receiving a travel advance. The NMB shall process all claims for travel expenses as expeditiously as possible. If an employee should not have adequate funds, the NMB will make every effort to make

alternative arrangements.

Section 5. Use of Privately Owned Vehicles/Government Furnished

Mileage for use of Privately Owned Vehicles (POVs) will be compensated at the maximum rate permitted by GSA.

Requests for the use of POV/Rental Cars will be acted on using current NMB policies in a fair and equitable manner.

Common carriers will be used whenever it is reasonably available, unless:

The use of a common carrier would seriously interfere with the performance of official business; or

The Federal Travel regulations provide for some other mode; or

The employee requests and receives approval to use a POV or rental car.

Section 6. Document and Property Loss/Theft

An employee is accountable for government documents or property in their possession and/or custody. Employees exercising reasonable care will not be held responsible for documents or property damaged, lost, or stolen from their possession and/or custody.

Article 9—Health and Safety

Section 1. General

The NMB shall provide a safe and healthy work environment in accordance with Executive Order 12196 and the Department of Labor implementing regulations.

The NMB and the Union agree to cooperate in a continuing effort to avoid and reduce the possibility of and/or eliminate accidents, injuries and health hazards in all areas under the Employer's control. The NMB will annually provide all incident and accident figures required by OSHA to the joint Health and Safety committee. The NMB will also provide NMB compensation figures required by OSHA to the Union. The NMB will make available, upon request, raw data (incident reports, workers' compensation claims, etc.).

OSHA standards will be used throughout NMB and shall be considered minimum requirements. Requests that vary from the standards must be made through the Health and Safety Committee.

Section 2. Committees

The parties agree to establish a joint Health and Safety Committee at the NMB.

The Committee will consist of six (6) individuals, three (3) nominated by the Union and three (3) nominated by Management, appointed to the Committee by the NMB's Chief of Staff.

The committee functions will include, but will not necessarily be limited to, those activities set forth in Section 3.A of this Article. Frequency of committee meetings will be determined by the Committee. However, the Committee will meet no less than four (4) times a year.

The NMB will pay for all travel and per diem expenses incurred by Union members of the Committee, as approved by the Chief of Staff.

In accordance with applicable laws and regulations, the Employer will provide available information which is necessary to the duties of the Committee upon request.

Section 3. The functions of the Committee include, but are not limited to:

- Establishing and regularly reviewing a charter for the Committee
- Establishing a basic training package for Committee members
- Cooperating with building management to conduct safety inspections and report the findings to NMB management
- Participating to the extent appropriate in inspections by government authorities outside the NMB's control
- Receiving and coordinating investigation of employee reports of unsafe or unhealthy conditions
- Developing, in conjunction with building management, emergency response procedures and abatement plans
- Acting as liaison to the building maintenance staff regarding air quality, temperature, safety warnings, and other related issues; and
- Receiving and monitoring copies of written notices to the NMB regarding issues of safety and health.

In the event that the Agency's response or building maintenance's response to complaints regarding safety and health are challenged by individual employees or the Committee, the Committee may raise the issue through the Union grievance process or directly with the NMB Chief of Staff.

Section 4. Abatement of Unsafe and Unhealthy Working Conditions

The Employer shall make every reasonable effort to promptly abate unsafe or unhealthy working conditions.

In the event of any emergency situation, the Committee will be notified as soon as possible. If the nature of the emergency is beyond the capabilities of building security or the management company's emergency plan, the Committee may directly request assistance from the Federal Protective Service or other appropriate agency through the Director of Administration.

An abatement plan will be prepared if the abatement of an unsafe or unhealthy working condition will not be possible within 30 calendar days. Such plan shall contain an explanation of the circumstances of the delay in abatement, a proposed timetable for the abatement, and a summary of steps being taken in the interim to protect employees from being injured as a result of the unsafe or unhealthy working conditions.

Section 5. Training

All Committee members will be offered 16 hours of basic training when they assume Committee membership, including training in OSHA guidelines, and ongoing training as recommended by the Committee. Such training will be excluded from any bank or block of official time.

Nothing prohibits the parties from agreeing to additional health and safety training.

The Employer will continue to provide employees with the appropriate orientation and/or training that the Employer deems necessary to perform their jobs safely. Such training shall include instructions in the proper work methods to be used and proper use of required equipment.

Section 6. Identification of Local Health Service Needs

The NMB and the Union recognize the need and agree to cooperate in identification of local health service needs, such as emergency treatment of illness or injury on the job, periodic testing for early detection of chronic diseases or disorders, immunization programs, periodic medical examination programs and health education. The NMB will, at a minimum, continue to provide emergency treatment and physical exams where presently provided.

The NMB will locate low cost/no cost local medical providers for services such as cholesterol, blood pressure and dental screenings, mammograms, etc., and will make such information available to employees. The NMB will also provide/pay for physician-recommended flu shots.

A reasonable amount of administrative leave will be granted to employees who are availing themselves of these services.

Management will provide timely testing for those who reasonably believe that they were exposed in the conduct of their official duties to a person who may have a serious infectious disease. There will be no cost to the employees for leave or the exam.

Section 7. Inspections

The NMB shall:

Assure that a designated Union representative from the Committee accompany all safety or health inspections of NMB work places;

Respond to employee reports of hazardous conditions and require inspections in a

timely manner (within 24 hours for imminent dangers, three (3) working days for potentially serious conditions, and 20 working days for other conditions). Reports will normally be submitted to the Committee, and the Committee will take all reasonable steps to assure the anonymity of those making reports. However, an investigation may not be necessary, if through normal management action and with prompt notification to employees, the hazardous condition identified can be abated immediately.

The Parties agree that each work site facility will be inspected on a schedule set by the Committee.

Section 8. Temperature Conditions

The Parties recognize that temperature conditions in and around work areas can have a direct bearing on employees' health. The Parties agree that the problem of temperature extremes, either hot or cold, and appropriate measures to reduce the risk of exposed employees are appropriate matters for referral to established health and safety committees or to the local health and safety representatives, as appropriate.

Section 9. Reporting Unsafe Conditions

The NMB shall assure that no employee is subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthy working condition, or other participation in NMB occupational safety and health program activities.

Section 10. Notification of Danger

When the Employer receives a report that a dangerous, unhealthful or potentially dangerous or unhealthful condition is present at a particular work site, the Employer shall notify the Health and Safety Committee of the alleged dangerous or unhealthful condition.

Section 11. Onsite Security

The Employer will make reasonable efforts to protect employees from abusive and threatening clients and will take reasonable precautions to ensure such protections.

The Employer will arrange for emergency protective assistance at each office to enable employees to receive assistance if the situation requires it.

Whenever an employee is faced with a physically threatening situation, the Employer will provide appropriate assistance.

Employees will not be required to divulge personally identifiable information to the public in individual circumstances where the employee reasonably believes harassment or physical abuse may result. In such cases, the employee should immediately inform the supervisor.

Where conditions warrant, the Employer will provide equipped security guards at the NMB facilities.

The NMB will equip reception areas with appropriate security devices to ensure, to the maximum extent possible, employee safety.

All phones will be labeled with appropriate emergency numbers.

Section 12. Leases

NMB-maintained leases of spaces will be provided to the Union upon request.

Section 13. Emergency Preparedness

The Committee will work with building management and security to prepare an emergency preparedness plan. This plan will publish the chain of command, which will identify a member of NMB management or designee who will be physically present for employee direction during all scheduled work hours in each permanent installation. The plan will also cover employee procedures in the event of fire, earthquake, bomb threat, tornado, flood, or similar emergency. Evacuation drills will be conducted on a schedule recommended by the Committee.

The Employer agrees to make reasonable efforts to assure that each installation has adequate personnel available to administer cardio-pulmonary resuscitation (CPR). The Committee will make CPR training part of the basic 16 hour training package for Committee members.

The NMB will provide CPR shields and masks for CPR volunteers. Training for CPR certification and/or recertification will be at no cost to the volunteer.

The Employer agrees that the first concern when an employee is injured on the job is to make certain that he/she gets prompt emergency medical aid. Doubts over whether medical attention is necessary will be resolved in favor of arranging medical aid.

When it is necessary to assist an employee to return home because of illness or incapacitation or to provide transportation to a medical facility, the Employer will attempt to arrange for transportation. If a coworker volunteers to transport the employee, and the Agency accepts the volunteer's offer of assistance, there will be no charge of leave for the coworker.

The Employer agrees to maintain adequate first aid supplies at each permanent installation. All employees will have reasonable access to these supplies.

Section 14. Use of Insecticides and Other Like Chemicals

To the extent that the Employer has control, there will be no application of insecticides and other like chemicals during working hours in leased space. In NMB-controlled buildings, there will be no application of insecticides and other chemicals during working hours. Such other chemicals include paint, carpet glue, HVAC cleaning agents and similar construction chemicals. Whenever pesticides are used in a large-scale application, the health and safety representative, as well

as employees, will receive advance notice about the spraying. Individuals with special health needs will be reasonably accommodated.

Section 15. Stress

The Parties agree that recognizing, minimizing and coping with stress are essential parts of employee wellness. Management will make every effort to provide annual training on stress reduction, and will work with the Committee to develop an NMB wellness program. Employees who feel they are experiencing harmful levels of job-related stress, may contact employee counseling services.

Section 16. Smoke Free Environment

In keeping with the Parties' concern for the health, safety and well-being of all NMB employees, there shall be "no smoking" in any NMB facility. The Parties agree that they will intensify efforts to assist those employees who are interested in breaking the smoking habit.

The NMB's smoking cessation program, found in Section 4450 of the NMB's Employee Manual, is included by reference in this Agreement.

Employee participation in counseling or cessation programs related to smoking is strictly voluntary.

Section 17. Job Safety Analysis

In situations where information indicates that employees in a particular occupation are suffering from a pattern of accidents, disabling injuries and/or illnesses, Management will, at the request of the Committee, conduct a Job Safety Analysis (JSA).

A JSA may consist of, but not be limited to, the following: general conditions under which the job is performed; an explanation of the job steps; an explanation to determine the hazards that exist or might occur; recommendations to eliminate any of the hazards identified.

Copies of all studies and all completed JSA's will be provided to the Union within 30 days after completion of that JSA.

Each employee covered by a particular JSA will receive a copy within 30 days after completion of the JSA, which covers his/her position.

Section 18. Video Display Terminals/Ergonomics

The NMB will purchase, use and maintain video display terminals in a safe manner. When developing procurement specifications for video display terminals and printers, ergonomic furniture and chairs, ergonomic accessories such as footrests, wrist rests, document holders, glare screens, and other ergonomic equipment, the NMB will use OSHA standards.

Special Needs

Employees with special needs stemming from factors such as height, weight or disability will be accommodated on a case-by-case basis, consistent with ADA guidelines.

Miscellaneous

Article 4 is applicable to any change in floor plans or any site preparation.

Wiring for the terminals shall be accomplished in such a way as to prevent tripping hazards.

Section 19. Indoor Air Quality

The Parties agree that all NMB employees are entitled to work in an environment containing safe and healthful indoor air quality. The NMB shall provide safe and healthful indoor air quality by conforming to laws, guidelines, regulations and/or policies issued by federal regulatory agencies such as OSHA, EPA and GSA.

Onsite investigations/inspections will be conducted by building maintenance, with a report back to the Committee, when a problem concerning indoor air quality or building related illness is formally brought to management's attention. These investigations/inspections shall meet the criteria of the GSA Federal Property Management Regulations and the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), the protocols of OSHA or the American Conference of Government Industrial Hygienists.

Renovation and Construction

The NMB will:

Isolate areas of renovation, painting, carpet laying, pesticide application, etc., from occupied areas that are not under construction;

Perform this work during evenings and weekends. Ensure that contaminated concentrations are sufficiently diluted prior to occupancy;

Supply adequate ventilation during and after completion of work to assist in dilution of the contaminant level; In leased space, the NMB will work with the lessor and/or GSA in order to achieve and maintain these standards.

Section 20. Vision Program

For those employees with eye problems related to their regular use of computer equipment on the job, and for whom a certified optician or ophthalmologist will supply a verification that existing eye problems are the result of regular computer use and a prescription for glasses correcting the computer-related eye problem, the NMB will pay for one pair of glasses, minus the amount covered by the employee's insurance program, up to \$100. This benefit is available once during the term of this contract, and does not cover eye conditions that existed prior to the employee's regular use of computer equipment on the job. The NMB will allow two hours of official time off for the exam.

Article 10—Hours of Work

Section 1. Purpose

The Parties recognize that in order to build a high quality, customer-focused team, it is necessary to create a high quality, family-friendly work environment that will attract and retain highly qualified, professional employees. The Parties agree that the primary mission of the Agency is to serve the needs of its customers and partners. Within the need to serve both customers and partners, the Parties are committed to establishing and supporting flexible work arrangements so employees can balance work with personal and family life.

Section 2. Definitions

A. Administrative Workweek

The administrative workweek will be a period of seven (7) consecutive calendar days beginning on Sunday at 12:01 and ending on Saturday at 12:00 p.m. midnight.

B. Normal Business Day and Basic Work Week

The normal business day consists of an eight-hour day, a.m. to 5:00 p.m., Monday through Friday, inclusive, which taken together form the basic work week. The occurrence of holidays will not affect the designation of the basic work week.

C. Basic Work Requirement

The basic work requirement is the number of hours, excluding overtime hours, which an employee is required to work, or is required to account for by leave or otherwise. For full-time employees, the basic work requirement is 80 hours per biweekly pay period. A part-time employee's basic work requirement is the number of hours the employee must work in a biweekly pay period.

D. Flexible Work Arrangement (FWA)

For purposes of this Agreement, an FWA is a schedule where a full-time employee may elect, subject to the provisions of Section 3.C. of this Article, to work eight (8) 9-hour days and one 8-hour day during a pay period and designate one (1) non-work day during the pay period.

E. Flextime

Flextime is a schedule which permits an employee to select an arrival time each day, and to change that arrival time daily, as long as it is within the established flexible time band.

The normal flexible time band for the NMB is as follows:
Shift 1—7:30 a.m. to 9:00 a.m. Shift 2 —8:00 a.m. to 9:30 a.m.

Based on operational needs, a department will have the ability to limit a given position to a specific time band. Prior to doing so, the operational needs will be reviewed with the Labor Management Committee for their input. Such pre-review does not waive Management's rights to act, or the affected employee's right to challenge the decision through appropriate channels.

F. Credit Hours

Credit hours are normally those hours in excess of an employee's daily tour of duty which an employee elects to work, with Management's approval, in order to vary the length of a future workday or workweek (see Section 3.B.)

G. Alternate Duty Station (ADS)

An employee may volunteer to work at an ADS with Management's approval. An ADS may include an employee's residence or other designated location.

Section 3. Work Options

Subject to the terms of this Agreement, all employees may elect to work flextime, credit hours, and/or an FWA.

A. Flextime

1. Each quarter, employees will select to work under one of the established flexible shifts listed above. Management will normally approve all requests unless they determine that a coverage issue will result. In that case, the employee with the least senior service computation date (SCD) will be placed in the shift requiring the coverage. This process will be repeated quarterly with the SCD rotating to the next least senior employee.

a. Employees working an 8-hour daily tour may report for duty on any such day any time during approved flexible time band.

b. Employees working an FWA tour may report for duty on any such day at any time between 7:30 a.m. and 8:30 a.m.

2. For bonafide needs, e.g., educational purposes, car pool arrangements, child care needs, and/or other family considerations, managers will permit exceptions to the established starting times.

Employees will be allowed to flex out and in during the workday without charge to leave, subject to prior management approval. If a combination of an employee's starting time and the amount of time the employee is away from the work site precludes the completion of the employee's daily tour, the employee will be charged leave at his or her request or, if warranted, charged AWOL.

When the opening of the Agency is delayed due to hazardous weather or other conditions beyond the control of the Agency, all employees in the affected building(s) will revert to an 8:30 a.m. fixed starting time for that day. Ending time(s) will depend on the employees' scheduled daily tour for that day.

B. Credit Hours

1. Requests to Work Credit Hours

a. Normally, an employee will request to work credit hours in advance. This request will be made to the immediate manager by 12 p.m. of the day credit hours are to be worked. The request will be approved or denied by the manager as soon as possible.

b. Upon request of the employee, the earning of credit hours may be approved retroactively

where the circumstances warrant (e.g., where it was not practical for the employee to obtain advance approval).

c. If credit hours are approved and overtime is subsequently made available, the employee will be afforded the opportunity to elect to work the overtime.

2. Earning Credit Hours

a. All employees, including those who are part-time, will be authorized to work up to two (2) credit hours per day provided that there is work available for the employee, and it can be performed at the requested time(s).

b. Credit hours may be earned between 6 and 6 p.m. except as otherwise provided for in Section 3.A.2.

c. Credit hours may be earned in ½ hour increments.

d. Employees may accumulate and carry forward indefinitely from one pay period to the next a maximum of twenty-four (24) credit hours.

Normally, any credit hours in excess of 24 must be used within the pay period in which they are earned or be forfeited. If an employee is prevented by management from using credit hours for leave that had been approved in advance, the employee will be provided equal time off at the earliest mutually agreed upon date.

e. Compensation Waiver. An employee waives his or her right to premium pay for the time spent working credit hours.

f. Employees are not eligible to work credit hours at the ADS unless an exception is authorized by the employee's immediate manager.

3. Using Credit Hours

- a. Use of credit hours will be subject to the same criteria for approval as annual or sick leave. An employee may elect to use earned credit hours for all or any part of any approved leave.
- b. Credit hours must be earned before they may be used. Credit hours may be used in ½-hour increments.
- c. Where management elects to require employees to submit an SF-71 (Application for Leave) for credit hours used, employees should check the box marked "Other" on the SF-71 and specify in writing the words "credit hours."
- d. Employees should be aware that to avoid forfeiture, accumulation of credit hours of more than 24 hours per pay period is subject to prior leave approval.

C. Flexible Work Arrangements (FWA)

1. FWA Requests

Employees will have the option at or prior to the beginning of any calendar quarter (January, April, July, October) to:

- a. Request an FWA (new employees may enroll upon entering on duty). To ensure full consideration, requests should be submitted at least 10 work days before the beginning of a calendar quarter.
- b. Convert to a different work schedule option.
- c. On a case-by-case basis, an employee and his/her immediate manager may mutually agree to changes in an established schedule to meet ad hoc needs during any pay period.
- d. Employees may withdraw from an FWA at the end of any pay period.
- e. Management has the right due to operational needs to:
 - (1) Limit the selection of the day off in the FWA;
 - (2) Require employees to either change their day off during a specific pay period or go off FWA completely during a given pay period in order to insure adequate coverage as determined by management. For example, to cover for an employee on approved leave.

2. FWA Approval

- a. FWA requests will be decided at least two (2) working days prior to the beginning of a calendar quarter.
- b. Managers may approve FWA requests which depart from the core day requirement in order to meet special circumstances, or bona fide needs of the employee or the office. On a case-by-case basis, managers will give bona fide consideration to an employee's request based on circumstances such as educational purposes, child care or other family/personal considerations.

If the requested schedule is denied, the manager will give the employee a timely oral explanation for the denial. If requested in writing, such denial will be provided in writing.

D. Alternate Duty Station (ADS)

1. Requests Employees may request to work at an ADS on an irregular basis (episodic) to work on a specific assignment(s). Such request must be for a limited time, and if approved, the employee and the manager will mutually agree upon the terms and conditions.

2. Emergency Situation

In the event of a local emergency situation which adversely affects employees' ability to commute to the workplace (e.g., transit strike, natural disaster), the Parties agree to meet immediately to discuss possible temporary FWA for affected employees.

E. Holidays

In the event a Federal holiday falls on an employee's non-work day, the employee's non-work day will be as follows: If the holiday falls on a Tuesday through Friday, the day preceding the holiday will be the employee's non work day. If the holiday falls on a Monday, the following day (Tuesday) will be the employee's non-work day.

Section 4. Time and Attendance Certification

Employees will report any variation from the normal 80 hour bi-weekly tour of duty to his/her immediate manager.

Section 5. Overtime Provisions

It is mutually recognized that overtime compensation is made when an employee has been in pay status as determined by applicable law in excess of 8 hours per day (or 9 or 10 hours for an extended flextime participant) or in excess of 40 hours per week (or 80 hours per pay period for participants in alternative work schedules).

Leave usage is not a factor in approving overtime. The manager has the discretion to approve overtime if an employee is in LWOP and/or AWOL status during a given workday or workweek.

A. Overtime, when used, will normally be distributed to bargaining unit employees whose performance is at least fully satisfactory.

B. Overtime will not be distributed or withheld as a reward or penalty.

C. When an employee, whether covered by the Fair Labor Standards Act (FLSA) or exempt, works regular overtime, such overtime will be scheduled and paid in

increments of 15 minutes. When an employee, whether covered by the FLSA or exempt, works irregular/occasional overtime, such overtime will be scheduled and paid in increments of 15 minutes.

D. Employees covered by the FLSA will receive overtime compensation in accordance with the provisions of the FLSA.

E. When approved by the Agency, employees can accrue and use compensatory time in accordance with applicable law and regulations. When feasible, the Agency will grant an employee's request for compensatory time rather than payment for overtime.

F. It is agreed that non-bargaining unit employees will not be scheduled on overtime to perform the duties of bargaining unit employees for the sole purpose of eliminating the need to schedule bargaining unit employees for overtime.

G. When employees in a voluntary situation indicate in advance that they will work overtime, the Agency should have a reasonable expectation that they will keep their commitment.

H. Employees who are: 1) called back for a period of overtime, or 2) who work overtime on Saturday and/or Sunday, are entitled to a minimum of two (2) hours of overtime pay. Employees who work on a Federal holiday are entitled to a minimum of two (2) hours of holiday pay.

I. When scheduled overtime is to be mandated for all employees in the operating entity, employees will be notified at least two (2) days in advance. Notice of one (1) day will be given for all other scheduled overtime work whenever possible.

J. Employees will not be scheduled to perform functions on overtime below their grade levels unless the number of volunteers at the lower level is insufficient.

K. When the Agency decides to use overtime, volunteers will be solicited from among qualified volunteers before using non-volunteers.

L. Overtime will be assigned fairly.

Article 11—Union Use of Official Facilities and Communications

Section 1. Union Office Space

Management agrees to permit reasonable access to NMB facilities by recognized Union officials. When NMB issues are involved, reasonable access will be granted to the facility as well as use of equipment, such as faxes, phones and photocopiers. Management agrees, within the life of this contract, to provide the Union representative with a file cabinet and/or bookcase to keep official Union material stored. It is Management's intent to locate file cabinets and bookcases in existence from available supplies.

Section 2. Meeting Space

The NMB will make reasonable efforts to provide private space, as available, for confidential discussions between a bargaining unit member and a designated Union representative, when held in accordance with the terms of this Agreement. The NMB agrees that where there are facilities they shall be made available for local meetings and membership drives, before or after duty hours or during lunch periods if such space is not already committed. The Union must give sufficient advance notice to ensure no disruption to the normal mode of business. The NMB will not be obligated to incur any additional abnormal expenses for use of such facilities, such as heating or air-conditioning.

Section 3. Miscellaneous Services

The NMB agrees to furnish, where available, customary and routine services which are consistent with the best interest of the Employer, employees and the Union. Such services include internal mail (for other than mass mailing), photocopy equipment and the like. This will include NMB Union representatives if they are conducting representational duties away from their permanent duty station.

The Union may use available NMB video equipment (i.e., TV and VCR) for on-site presentations, orientation sessions, training and meetings with employees, subject to normal approval and scheduling procedures.

To the extent practicable, the NMB will provide the existing space for Union-supplied publication racks.

The Union will be provided with access in hard copy or electronic form to personnel manuals and guidelines when available in local facilities, and upon request, to copies of materials from personnel manuals and guidelines. All distributions of issuances under this Article will be at no cost to the Union.

The NMB telephone directories/listings will include the names and telephone numbers of Union stewards. NMB listings will also include AFGE Local 1923 President's office number.

Section 4. Mail Use

Consistent with postal regulations, the Union shall have use of NMB metered mail limited to labor relations representational matters but not including matters relating to internal Union business. This, however, does not permit the Union representative to use other types of mailing such as express, overnight, registered, certified mail, etc., except where required or to meet time frames imposed by a third party (e.g., EEOC, arbitrator, FSIP, FLRA) or by this Agreement.

Section 5. Copies of the Agreement

The NMB will provide copies of this Agreement, in quantities necessary for ratification purposes.

The NMB will provide, at no cost, booklet copies of this Agreement, printed in type

that can be read easily, to each employee on duty at the distribution date (within 90 days of the effective date of this Agreement), and to all employees entering on duty after that date.

The NMB will also provide a reasonable number of additional booklet copies to the Union.

The NMB, in recognition of the special needs of the blind employees in the bargaining unit, will also provide copies of this Agreement in Braille (or electronic form) to appropriate employees.

Section 6. Distribution of Union Publications

Official publications of the Union may be distributed on NMB property by Union representatives during approved official time or non-duty time. Distribution shall be accomplished at a time mutually agreed to by the parties and shall not disrupt operations. All such materials shall be properly identified as official Union issuances. Materials distributed will not malign the character of any Federal employee.

Section 7. Bulletin Boards

The NMB will provide Union bulletin board space, not less than 24 X 36 inches at each location.

Union bulletin board space will be prominently identified as such by Management and will be located in areas accessible to bargaining unit employees. All postings will be marked prominently as "Union Notices," and only the designated Union bulletin boards will be used for such postings.

The Union agrees that information posted on bulletin boards will not contain items relating to partisan political matters or propaganda against or attacks upon individuals. Information posted on bulletin boards by the Union relating to the installation, NMB or the Federal government will not contain language that will malign the character of any individual Federal employee.

Section 8. Telecommunications Systems

The NMB will continue to make telephones within NMB facilities available to the Union for the conduct of labor-management relations.

Where and when an NMB facility has voice mail installed, all Union officials assigned to that facility will be provided with voice mail capability for labor-management activities. Voice mail for Union officials, as for other employees, will be subject to systems capacity and availability.

Section 9. E-Mail

The Parties understand that access to and use of the NMB electronic mail shall not interfere with the mission or operation of NMB. Therefore, the NMB agrees to provide the Union with access to and use of the NMB electronic mail subject to the following restrictions:

The Union agrees its access and use will comply with applicable government-wide and NMB policies and guidelines (Policy #8000, effective date February 21, 2001) and this Agreement.

Access and use is limited to those situations where available hardware and software permit.

Access and use for representational activities shall be on approved official time (or non-duty time).

The NMB will develop an e-mail group in Outlook of all bargaining unit members.

Section 10. Labor Recognition Week

The Parties agree to jointly sponsor labor recognition week during the week preceding Labor Day. The events and materials used to display labor significance in history will be determined nationally.

Section 11. Health Insurance Plan Information

The NMB agrees to provide bargaining unit employees with information on open enrollment periods and, upon request, information on the various types of health plans available to employees.

The NMB will continue to provide information on health care providers.

Section 12. Addressing New Employees

The NMB will provide the Union an opportunity to address new employees during orientation.

Section 13. Notification to Employees of Exclusive Representation

The Union will provide a general notice to employees of the exclusive recognition granted to the Union, together with a list of Union-designated representatives and their work locations and telephone numbers to be posted on Union bulletin boards.

Article 12—Work at Home By Exception

Section 1. Purpose

This Section establishes a mutual understanding of the provisions which govern the temporary approval of work at home by exception

Section 2. Policy

The NMB recognizes the value of work at home during short periods of time to accommodate the special needs of an employee and, at the same time, the benefits of retaining the services of an employee at a time when those services would otherwise be unavailable. Accordingly, the Agency will consider requests for working at home in cases such as, but not limited to, the following: 1) during periods of recuperation from an illness, injury, maternity or condition certified by a

physician, when the employee is able to work all or part of a day but not physically able to commute to work; and 2) during short periods of time when it is necessary for the employee to remain at home to monitor the needs of family members who are ill or require assistance but when such needs are not so demanding as to preclude the performance of work.

Section 3. Procedures

An employee who believes that he or she qualifies for work at home under this policy should request approval to work at home from her/his immediate supervisor. The request shall include documentation of the condition, the expected duration of work at home, and the arrangements needed to accommodate such a request. The supervisor shall respond within a reasonable period of time, but not more than 10 days after the request has been received, giving the reasons for approving or denying the request. If the request is approved, the supervisor shall negotiate the arrangements with the employee and his or her representative if requested, including how work and work products are sent and received, how communications are maintained, how equipment needs are met, and how hours of work and leave are to be accounted.

Section 4. Reasons

Supervisors should attempt to accommodate the employee's request, provided that the reason for the request falls within the spirit of the stated policy as reflected in Section 2. Typical reasons for denying an employee's request include: 1) the period of time requested is unreasonable, or 2) documentation for the request is insufficient to justify approval.

Article 13—Transportation Section 1. Commute Options

The NMB will promote the use of alternative commuting options. The NMB will make arrangements for employees to advertise ridesharing opportunities.

The NMB will work closely with public transportation agencies to facilitate the availability of public transportation to the facility with special emphasis to accommodate mobility-impaired employees.

Section 2. Transportation Subsidy

The NMB will maintain its current Transportation Management Program for all bargaining unit employees. Should the NMB determine that changes to the current program need to be implemented (other than increasing the current subsidy), the provisions of Article 4 may be invoked.

Article 14—Reduction-in-Force and Transfer of Function

Section 1. Negotiations

The NMB and the Union recognize that unit employees may be seriously and adversely affected by a reduction-in force and/or transfer of function action. In the event of a reduction-in-force and/or transfer of function, the NMB will notify the Union and fulfill its obligation to bargain consistent with 5 U.S.C. 71.

Section 2. Notification to Union

Written notification shall be made at the earliest possible date but not less than 60 days prior to the advance notice to employees. The notification will include:

The reason for the action to be taken;

The approximate number of employees who may be affected initially;

The types of positions anticipated to be affected initially; and

The anticipated effective date that action will be taken.

The NMB shall provide the Union, upon request, with information in accordance with 5 U.S.C. 7114(b) (4).

Section 3. Notice to Employees

The NMB will give an advance notice of 60 calendar days to employees who may be affected by a reduction-in-force action.

Article 15—Contracting Out Bargaining Unit Work

Section 1. Prior Notification to Union

When the NMB anticipates contracting out of bargaining unit work regardless of how the contract is to be implemented (i.e., competitive, minority, SBA contract, etc.) the Union will be notified prior to the invitation for bids. The notice will include general information concerning the employees who may be affected.

Section 2. Union Requested Discussions

Following such notice, upon request from the Union, the NMB will meet with the Union to discuss the information contained in the notice.

Section 3. Management Decisions

The decision by the NMB to contract out work presently being performed by bargaining unit employees will be made in accordance with OMB Circular A-76, and

other applicable rules and regulations.

Section 4. Effects on Bargaining Unit Employees

If bargaining unit employees are impacted by the decision of the NMB to contract out work, the NMB will proceed in accordance with Article 4 of this Agreement and 5 U.S.C. 71.

Article 16—Training and Career Development

Section 1. Commitment to Training and Career Development

The NMB and the Union agree that the training and development of employees is important in carrying out the mission of the NMB and recognize the value of enhanced skills to the Agency and to the employees.

As an agency, the NMB is committed to enhancing in its employees the skills, abilities, and knowledge necessary to ensure that all NMB services are delivered in a highly professional manner. In order to pursue employee development, the NMB has adopted an approach that involves assessment of agency needs and assessment of employee needs and interests in a mutually beneficial format. To accomplish this, the NMB will use Individual Development Plans (IDP's) as well as appropriate training programs. The NMB's developmental program is individually oriented and is flexible, taking into account individual learning styles.

Employee development is undertaken by the NMB for the primary purpose of developing skills in its workforce that enhance the Agency's ability to perform its work and fulfill its mission. The IDP process identifies many possible training and development opportunities. Employees may make requests for training or development that fulfill professional desires and goals. Not all of the requests made by employees can or should be met by the Agency. Requests outside of the Agency's needs, that are still professional objectives, may be accomplished by the individual on his or her own time and through his or her own means.

The IDP is intended to empower the employee to take an active role in determining his or her development options in cooperation with his or her supervisor and upper management. IDP's will not be unilaterally imposed upon the employee by Management.

Section 2. Non-Discrimination

The parties agree that employee participation in training and career development programs and courses shall be nondiscriminatory and made without regard to sex, race, religion, age, marital status, ethnic group, handicap and Union membership or activity, and shall be in accordance with equal employment opportunity guidelines, and consistent with other applicable laws.

Section 3. Career Development and IDP Planning

Career development for individual employees shall be encouraged through the use of an IDP. The NMB agrees, on an annual basis, to provide information and

assistance, if necessary, to employees for the purpose and means of developing and modifying IDP's as necessary.

Section 4. IDP Planning Steps

Each employee will complete an IDP worksheet, including a discussion of short and long term goals, and any specific training or development opportunities that may support these goals. On the IDP worksheet that the employee receives, there is a summary of the Agency's needs related to the employee's department. The employee is asked to identify short term and long term goals that match the Agency's needs and are consistent with the employee's career development. On the worksheet, any specific training or development opportunities can be noted for discussion.

The employee's supervisor will review the completed worksheet, perhaps in consultation with upper management, before holding an IDP conference with the employee. The purpose of the IDP conference is to refine the goals, and to approve specific training and development opportunities for the employee. After the IDP conference, the employee will complete the IDP contract form and return it to the supervisor for signature and implementation.

If the employee has an intractable difference of opinion with the supervisor regarding training or development opportunities, he or she may request a joint meeting with the supervisor and the Deputy Chief of Staff or the Chief of Staff, as appropriate, to further discuss requested training. Such request is not a waiver of rights under 5 U.S.C. 71 or this Agreement.

Upon completion, the IDP becomes a part of the employee's work plan, and will be considered during each performance evaluation discussion as it pertains to one of the non-critical elements.

Because of the nature of their appointments, IDP's are not utilized for term or temporary employees.

Section 5. Training Programs

The NMB will remind employees, at least annually, of the availability of government-sponsored training programs. Employees will be informed through media that includes electronic, hard copy, or library materials that will include training programs, training resources, seminars and conferences. Employees are also encouraged to take the initiative to identify programs that meet their training needs. Training requests and/or approval will be based on the potential use of the training in the employee's current position or IDP, and other criteria established by applicable law, rule or regulation. Approving officials will apply such criteria equitably.

Employees will be notified in writing of the approval or disapproval of their requests and the reason for disapproval. To the extent feasible, employees will be notified of the approval or disapproval prior to the starting date of the training. Should an employee request for training, including training courses contained in an IDP, be

disapproved for lack of resources, the employee request may be reconsidered as funds later become available, and the request will be given first consideration.

All practical training modes may be considered, such as classroom training, electronic or textbook tutorials, web-based training, mentoring and internal training, depending upon availability, practicality and the individual's learning style. Employees or managers may initiate discussion of individual training needs. Such discussions may or may not be linked to an IDP.

When events or technological changes trigger the agency's need for required training, advance notice will be given as soon as practicable.

Section 6. Use of Labor-Management Committee for Review

The NMB and the Union have agreed to utilize the Labor-Management Committee (LMC) to review NMB training and career development programs. It shall meet to discuss: training methods, training and career development needs, education and communication, efficacy of training initiatives and other related issues. It will be a focal point for sharing information on NMB department and Agency-wide training and career development.

Section 7. Career Development Programs

The NMB will determine when to offer career development programs to prepare employees for potential future jobs or assignments. Such programs will be offered depending on the availability of funds and the needs of the NMB. The NMB will publicize all career development programs when they are announced. Announcements will contain adequate specific application instructions.

Career Development Programs will provide opportunities for temporary developmental assignments to increase knowledge of NMB programs and work processes. The LMC is the appropriate forum for making recommendations and sharing information on NMB-wide career development.

Neither Party waives its rights under 5 U.S.C. 71 regarding the implementation of career development programs.

Section 8. Training Expenses

When training is approved, employees will not incur costs for NMB required training necessary for the performance of their assigned duties. The NMB will pay costs of tuition and required textbooks and other expenses as appropriate, and may pay travel costs, subject to travel regulations and fiscal considerations. If travel funds are not authorized and the training would otherwise be approved, the employee will be notified and given the option of attending the training without travel reimbursement. Duty time will be approved for training when it is scheduled during the employee basic workweek. When training is deferred or canceled, the employee will report to work for her or his normal duty schedule.

Employees will not incur costs for NMB required professional certification/re-certification or licensure courses.

ARTICLE 17—Awards

Section 1. Overview

This Article establishes the Awards Program for bargaining unit employees of the NMB. The awards program is designed to encourage participation of all employees in improving the Board's operations and to recognize and award eligible employees individually, or as groups, for contributions that meet organizational goals or improve the efficiency, effectiveness, economy, productivity, or for other improvements that are above and beyond normal job requirements.

Section 2. Authority

Authority for this program is provided in 5 U.S.C. 45 and Part 451 of the Code of Federal Regulations (C.F.R.).

Section 3. Payment of Monetary Awards

Monetary awards are in addition to base pay and are subject to withholding of appropriate Federal and State income taxes. Monetary awards are not basic pay for any purpose. When an award is based on a rating of record and is a percentage of base pay, the rate of base pay used shall be determined without taking into account any locality-based comparability payment.

Section 4. Awards Based on Performance Ratings

Two types of awards based on annual performance ratings are available to recognize employee contributions. These are: A. Performance Awards, and B. Quality Step Increases.

A. Performance Awards are granted to employees whose performance is "Exceeds Fully Successful" or better. Amounts are based on a formula that considers the employee's rate of pay and her/his annual performance rating of record. The amount of money available for these awards, and the formula used to calculate the individual awards, may vary from year-to-year. The narrative from the annual appraisal is used as documentation for the award.

B. Quality Step Increases (QSI's) may be granted to employees who receive an "Outstanding" performance rating, except for those employees who are in Step 10 of the pay range for the grade. Documentation for a QSI must include a narrative description describing the contributions of the employee which merited a rating of "Outstanding."

Section 6. Incentive Awards

In addition to Performance Awards based on an employee's annual rating of record, other awards may be granted to recognize tangible or intangible contributions coincident with and directly supportive of the goals and objectives of the Board as expressed in its Annual Performance Plan. These awards include A. Special Act or Service Awards, B. Honorary Awards, C. Time Off Awards, and D. Suggestion Awards.

A. **Special Act or Service Awards** are monetary awards which recognize special contributions within or outside normal job responsibilities, including a special achievement or service. These awards may be granted either to individuals or to groups. Documentation must describe the contribution, the tangible and/or intangible benefits and the impact, e.g., improved efficiency of the Board, improved service to the public, or innovations. (Usually, an employee should obtain her or his supervisor's approval before undertaking activities which may merit recognition, but which fall outside the Agency's performance plan or the individual's job description.)

B. **Honorary Awards** are non-monetary awards which usually are granted in the form of certificates, commemorative objects, or similar tokens to recognize the sustained contributions of individuals or groups. No supporting documentation is needed for this type of award.

C. **Time Off With Pay Awards** grant time off without loss of leave in recognition of superior accomplishments or other personal contributions to the quality, efficiency, or economy of the Board's operations. Examples of employee achievement that might be considered for such an award include a) high-quality contributions involving a difficult or important project or assignment; b) special initiative and skill in completing an assignment or project before a deadline; c) initiative or creativity in making improvements in an activity, program, or service; or d) successfully completing additional work or a project assignment while maintaining normal workload.

The maximum time off that can be awarded for a single contribution is 40 hours, and the maximum that can be granted to an employee in any one leave year is 80 hours. Time off must be used within one calendar year of the date it is granted and cannot be converted to cash under any circumstances. Documentation of Time Off Awards is the same as that used to document Special Act Awards.

D. **Suggestion Awards** are monetary awards based on suggestions bargaining unit members make to management on improvements to the efficiency of the work of the Agency. If the Agency accepts the suggestion and implements it, the author of the suggestion will receive an award.

In the event that a decision regarding adoption or non-adoption of a suggestion is not made within 60 days of submission, the employee, upon request, will be given a written or oral status report.

Non-adoption of employee suggestions are to be written and contain specific reasons for non-adoption.

If the idea set forth is rejected, but later is adopted, the appropriate suggestion coordinator will, if the matter is brought to his/her attention within the two-year period after the date of the rejection notice, reopen the case for award consideration.

An employee who informally submits a suggestion (i.e., orally gives his/her idea to a staff or management person) that is adopted must submit in writing within six (6)

months of the date the suggestion is placed in effect. Otherwise, the suggester will not be considered for a cash award.

Section 7. Recommendation and Approval of Awards

Recommendations for awards are prepared by the employee's first-line supervisor and submitted to the Chief of Staff for approval. For those employees whose supervisor is the Chief of Staff, award recommendations are submitted to the Chair of the Board for approval.

Section 8. Annual Data on Awards

Annually, when awards are given, Management will give the Union data on the distribution of awards, i.e., the total amount of funds available and the amount allocated to the bargaining unit.

Article 18—Equal Employment Opportunity

Section 1. Overview

The NMB and the Union affirm their commitment to the policy of providing equal employment opportunities to all employees and to prohibit discrimination because of race, color, religion, sex, national origin, disabling condition, age, or sexual orientation. In addition, the parties recognize their commitment to the policy of prohibiting discrimination on the basis of marital status or political affiliation. The NMB will have a positive, continuing and results-oriented program of affirmative action. The parties agree that Equal Employment Opportunity shall be administered in accordance with Title 5 U.S.C., the Civil Rights Act of 1991, the Rehabilitation Act of 1973, as amended, the Age Discrimination in Employment Act (ADEA), Executive Order 11478, and other authorizing legislation and applicable regulations.

Section 2. Sexual Harassment

A. Policy

Sexual harassment constitutes unlawful discrimination on the basis of sex in violation of Section 703 of Title VII of the Civil Rights Act of 1964, as amended. It is the policy of the NMB to prohibit sexual harassment discrimination. Furthermore, any act of retaliation, interference or coercion against an employee who files sexual harassment charges under this policy is also prohibited.

B. Definition

Sexual harassment is defined as unwelcome advances, requests for sexual favors and other verbal or physical conduct of a sexual nature which may occur under one (1) of the following three (3) circumstances:

Submission to the sexual request or conduct is made either explicitly or implicitly a term or condition of employment;

Submission to or rejection of the sexual request or conduct by an individual is used as the basis for employment decisions affecting such individual; or

The sexual request or conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

See The Equal Employment Opportunity Commission (EEOC) Guidelines, 29 C.F.R. § 1606.11.

Section 3. Age Discrimination Policy

A. Policy

The NMB prohibits discrimination against persons 40 years of age or older in regard to a job application, interviewing, hiring, advancement, discharge, compensation, job training, and other terms, conditions, and privileges of employment at the NMB.

B. Definition

It is unlawful for an employer:

1. to fail or refuse to hire or to discharge any person or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of that person's age;
2. to limit, segregate, or classify his employee in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such person's age; or
3. to reduce the wage rate of any employee in order to comply with this law.

See 29 U.S.C. 621.

Section 4. Americans With Disabilities Act Policy

A. Policy

The NMB prohibits discrimination against any person on the basis of a disability in regard to a job application, interviewing, hiring, advancement, discharge, compensation, job training, and other terms, conditions and privileges of employment at the Board.

B. Definition A disabled employee under the Americans with Disabilities Act (ADA) is one who:

1. has a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
2. has a record of such impairment; or
3. is regarded as having such an impairment.

See 42 U.S.C. § 12102(2).

C. Reasonable Accommodations for Employees with Disabilities

In accordance with Section 501 of the Rehabilitation Act of 1973, as amended, Section 403 of the Vietnam Veterans Readjustment Assistance Act of 1974, as amended, and other government-wide rules and regulations pertaining to the employment of individuals with disabilities, the NMB will offer reasonable accommodation to the known physical or mental limitations of qualified individuals with a disability regardless of type of appointment, unless the NMB can demonstrate that the accommodation would impose an undue hardship on the operation of the NMB's program as defined in 29 C.F.R. § 1614.203.

The Parties recognize that individual accommodations will be determined on a case-by-case basis, taking into consideration the employee's specific disability, existing limitations, the work environment and any undue hardship imposed on the operation of the NMB's program as defined above. Qualified employees with disabilities may request specific accommodations.

Both parties agree to use the ADA definition of "reasonable accommodation" in any consideration of employee requests. The NMB will eliminate undue delay in considering requests for reasonable accommodations for employees with disabilities despite general fiscal constraints. Such accommodations are to be considered as exceptions to the general restrictions and will be evaluated on a case-by-case basis with regard to the merit of the request.

Should a non-probationary employee become unable to perform the essential functions of his or her position even with reasonable accommodation due to a disability, the NMB shall offer to reassign the employee when a funded vacant position is available and the other conditions in 29 C.F.R. § 1614.203(g) are met.

Section 5. Discrimination Policy

A. Policy

The NMB prohibits discrimination against any person on the basis of race, color, religion, sex, national origin, or sexual orientation in regard to a job application, interviewing, hiring, advancement, discharge, compensation, job training, and other terms, conditions, and privileges of employment at the Board.

B. Definition

Under Title VII of the Civil Rights Act, it is unlawful for an employer:

1. to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of that individual's race, color, religion, sex, or national origin; or

2. to limit, segregate, or classify its employees or applicants for employment in any way which deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of that individual's race, color, religion, sex, or national origin.

Section 6. EEO Procedures

Any employee who wishes to file or has filed a complaint shall be free from coercion, interference, and reprisal, and shall be entitled to expeditious processing of the complaint within the time limits prescribed by regulations. Any employee who seeks to file a complaint shall have the right to select a representative of his/her choosing.

Below is a brief description of the EEO process. If an employee has questions regarding this process, they should direct them to the EEO Director or the NMB's EEO counselors.

1. The first step is to contact the NMB's EEO Director or EEO counselor within 45 days of the discriminatory action.
2. The complainant may choose to participate in either counseling or in ADR. Mediation is the most frequently used ADR process in EEO disputes. Both the NMB and the complainant must mutually agree on the selection of the mediator. The Shared Neutrals Program or other mediators outside of the NMB will be used to mediate EEO disputes, unless the employee specifically requests the use of an NMB mediator.
3. Ordinarily, counseling must be completed within 30 days and ADR within 90 days.
4. At the completion of counseling, or if ADR is unsuccessful, the individual may then file a complaint with the NMB. An employee has the right to file a complaint under the negotiated grievance procedure (Article 24) or under the NMB EEO complaint procedure, but not both. EEO counselors will provide an inquiring employee a written description of both procedures. An individual has 15 days from the completion of counseling to file either complaint.
5. The NMB must conduct an investigation of the complaint, unless the complaint is dismissed or withdrawn.
6. Once the NMB completes its investigation, the complainant may request a hearing before an EEOC administrative law judge or request an immediate final decision from the NMB.
7. In cases where a hearing is requested, the administrative law judge must issue a decision within 180 days and send the decision to both parties.

8. Where discrimination is found, the administrative law judge orders appropriate relief. If the NMB does not issue a final order within 40 days after receipt of the administrative law judge's decision, the decision becomes the final action of the Agency. If the NMB issues an order notifying the complainant that the NMB will not fully implement the administrative law judge's decision, the NMB also must file an appeal at the same time.

Section 7. Filing an Appeal with the EEOC

If a complainant is dissatisfied with the NMB's final action, he/she may appeal to the EEOC within 30 days of receipt of the NMB's final action. The NMB may appeal the administrative law judge's decision within 40 days of receiving the decision.

Section 8. Remedies

The EEOC's policy is to seek full and effective relief for each and every victim of discrimination. The remedies may include, but are not limited to, the following:

- posting a notice to all employees advising them of their rights under the laws that the EEOC enforces and their right to be free from retaliation;
- corrective or preventive actions taken to cure or correct the source of the identified discrimination;
- nondiscriminatory placement in the position the victim would have occupied if the discrimination had not occurred;
- compensatory damages;
- back pay (with interest if applicable) and lost benefits; and stopping the specific discriminatory practices involved.

Section 9. Annual Distribution

On an annual basis, the EEO Director shall distribute a copy of the NMB's EEO Policies and Procedures to all Agency employees.

Section 10. EEO Counselors

The Parties agree that sufficient numbers of trained EEO counselors are necessary to a properly administered EEO program. Counselors will be given training and will be available and accessible to employees. Training on the subject of sexual harassment shall continue to be included in NMB training programs provided to EEO counselors.

It is mutually agreed by the Parties that the Union, at appropriate levels, may submit nominees for EEO counselor positions being filled on a collateral duty basis. The NMB will appoint the EEO counselors and will give consideration to the Union nominees.

When feasible, employees may select EEO counselors of their choosing. If the employee cannot be provided with a counselor of his/her choosing, the names of available counselors will be provided. Union officials representing employees in EEO

complaints will have prompt access, subject to applicable EEOC procedures, to copies of the EEO Counselor and Investigative Reports and the personnel records of the complainant.

The counselor will provide the employee or his/her representative a copy of the initial contact form that contains the name of the complainant, date filed, and a summary of the complaint. If the employee uses a Union representative, the copy will be given to the Union representative.

If an employee elects to utilize the grievance procedure with Union representation instead of the statutory procedure for alleged discrimination, the Union shall have the right of discovery, if the grievance is referred to arbitration.

Section 11. Affirmative Employment Program Plan

Establishment and implementation of the Affirmative Employment Program Plan is a fundamental NMB objective. The NMB is committed to affirmative action for the employment, placement, and advancement of qualified individuals with disabilities and disabled veterans. The NMB will continue to provide overall management support and budgetary planning to achieve affirmative action objectives throughout the NMB as outlined in 29 C.F.R. § 1614.102.

The NMB will provide the Union with the NMB's Affirmative Action Employment Program Plan including time frames set by both the EEOC and the NMB. Information sharing and discussion will take place. By June 1, 2002, the NMB will provide a copy of the plan to the Union, and upon request, fulfill its duty to bargain under law and this Agreement.

Consistent with the EEOC guidelines for the NMB's Affirmative Action Employment Program Plan, the NMB's plan shall include as appropriate:

A. A comprehensive program analysis of the current status of all affirmative action efforts including:

1. Organization and Resources;

2. Workforce Analysis:

- (a) Analysis of NMB's workforce by Professional, Administrative, Technical, and Clerical grade groupings and major occupations;
- (b) Comparison of NMB's workforce with the previous year's workforce; and
- (c) Comparison of NMB's workforce with the appropriate civilian labor force (CLF); Discrimination complaints (review bases, issues, and findings of informal and formal complaints); Recruitment and hiring;
- (d) Employment Development Programs;
- (e) Promotions; and

(6) Separations

3. Evaluation of the Affirmative Action Plan, including:

Problem and Barrier Identification;

Objectives and Action Items, including:

A clear statement of specific and measurable objectives and supporting action items, which will resolve problems, identified;

Assignment of a responsible official for each objective and action item;

A target date for completion of each objective and action item;

Establishment of numerical objectives (goals) for each job category or major occupation where there is a manifest imbalance or conspicuous absence of EEO group(s) in the workforce;

B. Monitoring:

NMB shall provide the Union annual status reports on workforce profile and action items.

C. Any and all EEOC evaluation of NMB progress will be timely provided to the Union.

The Parties will meet annually at NMB to assess progress and make recommendations for adjustments, as appropriate. The Union will be represented by up to three persons. This meeting will be informal, however, a written report of the meeting will be prepared.

In addition to its monitoring activities, the Committee will receive a briefing on the total NMB Program. Should adverse EEO impact be evidenced pursuant to Affirmative Action Employment Program Plan, specific and measurable objectives shall be set to correct the conditions. Those objectives will include, but not be limited to:

- Validating existing selection procedures or;
- Modifying or substituting selection procedures to alleviate adverse impact

Section 12. Information and Data

The NMB shall make available to employees written information describing the Affirmative Employment Action Program Plan and the EEO complaint procedure. The names and telephone numbers of collateral-duty EEO counselors will be posted on bulletin boards and kept current. Where full-time EEO counselors are available at a work location, the telephone number of the EEO Counseling Coordinator will be posted.

The NMB agrees to furnish the Union the following EEO information on a yearly basis:

- Workforce Profile by grade level according to sex, race, national origin, and disabling condition;
- Workforce Profile by selected professional, administrative,

technical, clerical and other white collar categories, and the blue-collar occupational category according to sex, race, national origin, and disabling condition;

- Promotion trend data for selected positions according to sex, race, national origin, and disabling condition;
- Outside hiring statistics for selected positions according to sex, race, national origin, and disabling condition;
- Age, national origin, and disabling condition data that is maintained by the NMB.

Section 13. Employee Evaluation

Employees who use authorized official time in EEO activities who otherwise would be in a duty status, will not be disadvantaged on their appraisals for approved absences to participate in functions authorized under this Article.

Article 19—Vacant

Article 20—Child Care

Section 1. Policy and Purpose

This Article addresses the child care needs of bargaining unit members. The Parties recognize that working parents have special child care needs during working hours and also recognize the high cost of child care.

Section 2. Employee Needs

The NMB agrees to grant emergency annual leave requests and to consider emergency requests for leave without pay brought about by unexpected changes in child care arrangements, contingent upon operational exigency.

The NMB agrees when possible to utilize programs which may assist employees with child care needs, e.g., part-time employment, job sharing, leave, flextime, etc. The NMB recognizes that it may be necessary for employees to contact child care providers during duty hours.

Section 3. Child Care Assistance for Low Income Employees

The NMB agrees to consider participating in the OPM's program to help lower income Federal employees with their child care costs. This program stems from Public Law 107-67, Section 630, and allows Federal agencies to spend appropriated funds on child care for lower income employees.

Article 21—Performance Appraisal

Section 1. Coverage

The provisions of this Article apply to all bargaining unit employees of the National Mediation Board.

All bargaining unit employees will receive a performance appraisal which will be based on a comparison of the employee's performance with the standards and elements established for the appraisal period.

Section 2. Definitions

A. Performance Management. The process used by the Agency to improve its effectiveness in accomplishing the NMB's mission and goals. It includes:

- communicating and clarifying organizational goals to employees;
- identifying individual and team accountability for accomplishing organizational goals;
- identifying and addressing developmental needs for individuals and groups;
- assessing and improving individual, team, and organizational

performance;

- using measures of performance as the basis for recognizing and rewarding accomplishments; and
- using results of performance appraisals as a basis for certain personnel actions, including performance improvement planning and reduction-in-force determinations;

B. Terms Used in Performance Management

Performance. The accomplishment of work assignments or responsibilities.

Performance Element. An identifiable work assignment or responsibility.

Critical Element. A work assignment or responsibility of such importance that unacceptable performance on that one element would result in a determination that an employee's overall rating is unacceptable. Unacceptable performance in a critical element is, by itself, cause for remedial action. Each performance plan must contain at least one critical element.

Non-critical Element. A dimension or aspect of individual, team, or organizational performance, exclusive of critical elements, that is used in determining a performance level. Such elements may include objectives, goals, program plans, work plans, and other means of expressing expected performance.

Performance Standard. A written description of a level of performance within each element. At least two levels of performance must be described for each element (See Section 6, below). The absence of a written standard for a particular level does not preclude the assignment of a rating at that level. A performance standard may include quality, quantity, timeliness, and manner of performance.

Performance Level. A measure of performance assigned in comparison to a written standard or inferred from a written standard. At the NMB, these measures of performance are Unacceptable, Minimally Successful, Fully Successful, Exceeds Fully Successful, and Outstanding.

Performance Plan. All of the written performance elements that set forth expected performance, including the critical, non-critical, and additional elements and their performance standards.

Performance Rating. The written appraisal of performance, compared to the standards for each element, including the assignment of a summary rating.

Summary Rating. A numerical and adjectival rating summarizing an employee's performance on all of her/his critical and non-critical elements, but not on additional elements, if any. It is an average of the ratings on each of the rated critical and non-critical elements in an employee's performance plan.

Rating of Record. The performance rating prepared at the end of the appraisal period, including the summary rating, signed by the supervisor and the reviewing official, and placed in the employee's Official Personnel File.

Performance Monitoring. The continuing observation of an employee's performance by the supervisor and the ongoing communication between the supervisor and the employee about progress and problems in meeting performance expectations.

Progress Reviews. Periodic communications between the employee and her or his supervisor, occurring one or more times during the appraisal period, for the express purpose of exchanging information and views on performance progress for each element.

Section 3. Performance Management Planning

Individual Performance Plans shall be prepared annually to communicate performance expectations to employees. The performance elements in the plans are to be based on the employee's officially assigned duties and responsibilities and should reflect the employee's role in accomplishing the goals of the NMB.

Section 4. Employee Participation

The elements and standards may be discussed between the employee and the supervisor at any time during the performance period, but the Union will be given reasonable advance written notice (normally at least 30 days), when the NMB proposes to change, add to or establish standards and elements.

Section 5. Appraisal System Principles

A. In general—performance standards and critical or non critical elements must be consistent with the duties and responsibilities contained in the employee's position description. The performance standards, the critical and non-critical elements and their application must be fair and reasonable.

B. Performance standards—performance standards must be clearly stated in the employee's performance plan. Normally, any changes to the employee's performance plan will be proposed and the Union notified during the first quarter of the fiscal year and implemented by the end of the first quarter of the fiscal year. If changes are made at any other time, all OPM guidelines regarding evaluation time lines will be followed.

C. Measuring performance—when statistical data is utilized in order to evaluate employee performance, the procedures that are used must reasonably insure the accurate evaluation of performance.

D. Appraising employees—when rating employees or otherwise applying performance standards, the Employer shall consider factors which affect performance that are beyond the control of the employee. An employee will be held accountable only for those job elements and performance standards for which the employee is officially responsible.

Section 6. Elements

Each Individual Performance Plan shall contain at least three (3) and not more than five (5) Critical and Non-Critical Elements. At least one of the elements must be a Critical Element.

Section 7. Performance Levels

The NMB Individual Performance Plans use five (5) performance levels for assigning ratings to individual elements:

- Unacceptable
- Minimally Successful
- Fully Successful
- Exceeds Fully Successful
- Outstanding

Section 8. Performance Standards

At the minimum, written standards of expected performance shall be prepared as follows:

For Critical Elements—at the Outstanding, Fully Successful, and Unacceptable levels.

For Non-Critical Elements—at the Outstanding, Fully Successful, and Unacceptable levels.

Section 9. Appraisal Period

Individual Performance Plans are annual plans, coinciding with the Agency's fiscal year, from October 1 through September 30. Plans should be put into effect as soon as possible after the beginning of the Appraisal Period, usually within 30 days after the beginning of the period or after a position change or the entry on duty of a new employee.

A. An employee must have been under an Individual Performance Plan, with the same supervisor, for at least 90 days. If the 90 days has not elapsed prior to the end of the regular appraisal period, the appraisal period shall be extended for that employee until the employee shall have been under the Plan for 90 days.

B. If an employee is under a Performance Improvement Plan and the ending date of the Plan extends beyond the normal appraisal period, the rating of record shall be deferred until after the ending date of the Plan.

C. **Putting Plans into Effect.** Individual Performance Plans must be signed for by the employee, indicating that the plan has been communicated to her or him, by the Supervisor and by the Reviewing Official.

Section 10. Performance Monitoring

A. **Ongoing Appraisal.** Supervisors are responsible for continuing, informal monitoring of employee performance, communicating with employees about observable deficiencies, and acting to resolve barriers to fully satisfactory performance.

B. **Progress Reviews.** Documented progress reviews provide the opportunity to identify and resolve problems or highlight outstanding areas in the employee's performance. At least one mid-year progress review should be held during the appraisal period to formally discuss the employee's progress on each performance element. Additional progress reviews may be conducted. The review should include the following characteristics:

1. Both the employee and the supervisor should prepare for the review, and both should be prepared to discuss the strengths and weaknesses of the employee's performance compared to each element and overall.
2. The employee and the supervisor should exchange views as to how the performance of the employee can be improved on each element and overall, particularly on any element for which the employee is performing at a level below Fully Successful.
3. The employee and the supervisor should exchange views on any other developmental needs that, if met, would either improve performance, provide for career growth, meet organizational goals, or overcome performance deficiencies.
4. The supervisor should inform the employee how he or she would be rated on each critical and non critical element if performance were to continue at the same level. The review should summarize the employee's progress in comparison to the performance expectations, and articulate any problems encountered or anticipated.
5. The supervisor will provide a copy of the documented progress review to the employee and place a copy in the supervisor's temporary working file.
6. Should performance indicate potential unacceptable performance (i.e., the employee is failing to meet one or more critical elements) and/or that the employee's next within-grade increase may be denied, appropriate action will be taken as follows. The supervisor shall develop, discuss with the employee, and implement a written performance improvement plan identifying the employee's performance deficiencies, the actions that must be taken by the employee to improve performance, and any provisions for counseling, training, reassignment, or other assistance as appropriate.

Section 11. Rating Performance

A. **Rating Interview.** As soon as practicable after the end of the appraisal period, the supervisor shall conduct a Rating Interview with the employee. The Rating Interview shall consist of a discussion of accomplishments and include an

opportunity for the employee to present performance information to the supervisor, either orally or in writing, organized by performance element. The supervisor does not provide the employee her/his rating at this time.

B. Rating of Record. Following the Rating Interview, the supervisor will prepare a written Rating of Record, as follows:

1. **Element Rating.** The supervisor will assign an adjectival rating to each element, as described above, except that elements in which the employee has had little or no opportunity to perform shall be rated as "NA" for not applicable. The adjectival ratings shall be converted to numerical ratings, using a scale of 1 to 5, so that a Summary Rating may be derived from the individual element ratings, as follows: Unacceptable, 1; Minimally Successful, 2; Fully Successful, 3; Exceeds Fully Successful, 4; and Outstanding, 5.

2. **Summary Rating.** The supervisor shall derive a Summary Rating by dividing the sum of the ratings

for all Critical and Non-Critical elements by the number of Critical and Non-Critical elements rated and converting the result to a Summary Rating, as follows, except that if (and only if) the rating in any Critical Element is Unacceptable (Level 1), then the Summary Rating shall be Unacceptable (Level 1):

4.66 - 5.00 **Outstanding** (Level 5)
3.66 - 4.65 **Exceeds Fully Successful** (Level 4)
2.50 - 3.65 **Fully Successful** (Level 3)
1.25 - 2.49 **Minimally Successful** (Level 2)

3. **Narrative Appraisals.** The supervisor shall prepare narrative appraisals of performance to complement the numerical and adjectival ratings. As a minimum, the narrative appraisals shall include:

A brief description of the reason the rating for an element is lower or higher than Fully Successful.

A brief summary of the employee's overall performance, to include performance highlights and significant deficiencies, if any, observed during the appraisal period, and contributions to team and organizational performance.

4. **Supplementary Information.**

In the event the employee has worked for another supervisor on the same performance plan during the rating period, the rating supervisor shall obtain and consider an advisory rating from the former supervisor.

In the event the employee has worked for another supervisor on a detail of 90 days or more during the rating period, the supervisor shall obtain and consider an advisory rating from the detail supervisor. The advisory rating may be used to

adjust the summary rating or in the granting of awards or recognition.

5. Effect of Approved Absences on Rating. Performance ratings must be based on actual performance. Performance Ratings shall not be lowered because an employee has been absent while undergoing medical treatment, or absent for an extended period of approved leave for other reasons, e.g. family leave. Also, employees who use authorized official time in labor relations activities will not be disadvantaged on their appraisals for approved absences or use of official time for those activities.

C. Higher Level Review. The Rating of Record will be reviewed by a Reviewing Official who shall be an official at the next higher organizational level. The review is for the primary purpose of assuring consistency and fairness across the organization in the conduct of performance appraisals. The Rating of Record may be adjusted at this time by the Reviewing Official.

D Supervisor's Discussion of Rating of Record with the Employee. After a review by the Reviewing Official of the Rating of Record, a discussion with the employee is conducted by the supervisor to explain the basis for the rating, ways for the employee to improve or strengthen the employee's performance, including developmental needs, as well as barriers to full performance as perceived by the employee.

The employee will sign and date receipt of the final appraisal. By signing, the employee officially signifies receipt, but does not constitute agreement.

E. Unacceptable Rating. In the case of a summary rating of Unacceptable, the Reviewing Official must assure herself or himself of the adequacy of evidence that performance is unacceptable and that opportunities had been given to the employee to improve her or his performance.

Section 12. Performance Improvement Plan (PIP)

When the supervisor determines that an employee's performance is deteriorating and could, if the deterioration continues, cause the employee to be placed on a PIP, the supervisor shall counsel the employee and develop a structured approach to improving the employee's performance. The counseling should occur as soon as the supervisor observes the deteriorating performance and the improvement plan should stay in effect until the performance improves or the employee's performance reaches a level that requires a PIP.

When the supervisor determines that an employee's performance would be rated Unacceptable in a critical element, the supervisor shall notify the employee in writing that performance is a problem to be addressed and that the employee has a right to Union representation. The supervisor shall develop and discuss, in consultation with the employee and, if requested, a Union representative, a written PIP, following all of the OPM guidelines for PIP's, identifying the employee's performance deficiencies, the successful level of performance, and the action(s) that must be taken by the employee to improve to the successful level of performance, the methods that will be employed to measure the successful level of

performance, and any provisions for counseling, training, or other appropriate assistance. The goal of the PIP is to return the employee to successful performance as soon as possible.

A reasonable period of not less than 90 days under a PIP will be given for the employee to achieve successful performance.

At any time during the PIP period, the supervisor may conclude that the employee's performance has improved to the Successful level and the PIP can be terminated. In that event, the supervisor will notify the employee in writing.

Section 13. Adverse Action for Appraisals

A. Should all remedial action fail and the employee's performance is determined to be unacceptable, the supervisor will issue a certification of unacceptable performance to the employee and the employee may be liable for adverse action. One of the following actions may be pursued:

1. When the employee is capable of performing another position of the same grade, the supervisor may propose to reassign the employee to such a position.
2. When the employee is not capable of performing any position at the same grade but is capable of performing a position at a lesser grade, the supervisor may propose a demotion to a position at the next lower grade.
3. If neither 1. nor 2. above is feasible, the supervisor may propose a removal or demotion to a lesser grade.

B. An employee who is reassigned or demoted to a position at a lower grade will be issued a performance assessment certification 90 days after assignment to a new position.

C. An employee whose reduction in grade or removal is proposed for unacceptable performance is entitled to the provisions of Article 23 of this Agreement.

Section 14. Employee Performance File

Official Ratings of Record are maintained in Employee Performance Files. Official Ratings of Record are not provided by the Board to any person outside the Agency, except as may be required by law or regulation.

Section 15. Advisory Rating

At the employee's request, the supervisor shall prepare an Advisory Rating for employees who transfer to another Federal agency during the rating period. An advisory rating shall be based on the employee's Individual Performance Plan in effect at the time of the transfer.

Article 22—Within-Grade Increases

Section 1. Basis for Granting or Denying

Within-grade Increases (WIGI) will be granted or denied based on whether an employee attains an acceptable level of competence and meets other statutory requirements.

Section 2. Supervisory Responsibilities

The decision to grant or withhold a within-grade increase must be based upon the employee's most recent appraisal. Denial of a within-grade increase may not be used in lieu of disciplinary action.

If during the waiting period when a supervisor's evaluation leads to a conclusion that an acceptable level of competence (Fully Successful or equivalent) is not being met, the supervisor will notify the employee that the employee has a minimum of 60 days to improve. When such notice is necessary the employee will be given:

an explanation of each aspect of job-related activities in which he/she falls below an acceptable level and how this renders his/her job performance, as a whole, below an acceptable level;

and a statement as to what the employee must do to achieve an acceptable level of competence in identified areas.

Section 3. Decisions

After completion of the waiting period, if the within-grade increase is to be denied, the employee will be given the supervisor's official determination in writing. The determination will include: a statement of the reasons for the negative determination;

identification of the areas in which the employee must improve in order to be granted a within-grade increase;

the right to request a reconsideration not more than 15 days after receiving the negative determination;

the statement: "Pursuant to 5 U.S.C. 5335(c), an employee must request a reconsideration prior to grieving a WIGI withholding."

the name of the official to whom the employee may submit a request for reconsideration;

the opportunity for the employee to contest, orally and/or in writing, the basis for the negative determination;

that an employee and/or his/her representative in duty status shall be

granted a reasonable amount of official time to review material relied upon to support the negative determination and to prepare a response to the determination;

that an extension of the time period for making a reconsideration presentation may be granted upon request to the reconsideration official.

Language will be added to the Notice of Decision to Withhold Within-Grade Increase, which states, "If you wish, you may provide a copy of this Notice to your Union representative."

Section 4. Reconsiderations

When an employee files a request for reconsideration of a negative determination, an employee reconsideration file will be established which shall contain all pertinent documents relating to the negative determination.

On or before 15 days following the date of receipt of the employee's presentation or the date of completion of any investigation, whichever is later, the reconsideration official shall issue a notice of decision to the employee. Language will be added to the notice which states: "If you wish, you may provide a copy of this decision to your Union representative." If the negative determination is sustained, the notice of decision shall inform the employee that any grievance filed will enter the grievance procedure at the pre-arbitration stage. The employee has 15 workdays to file a grievance.

If the decision reverses the negative determination, the within-grade increase shall be effective on the first day of the first pay period following completion of the required waiting period.

Section 5. Redeterminations

When a determination is made that an employee's job-related activities are not at an acceptable level and the determination is final, the determining official may grant the WIGI at any time when in his/her judgment the employee has demonstrated sustained total performance at an acceptable level of competence. In such cases, the WIGI will be effective the first day of the first pay period after the acceptable determination is made. After withholding a within-grade increase, the determining official shall determine whether the employee's total performance is at an acceptable level of competence within each 26 weeks following the original due date for the WIGI unless a favorable decision has been made during the interim or action to demote or remove the employee has been taken. If the new determination is favorable to the employee, the effective date of the WIGI will be the first day of the first pay period after the acceptable determination has been made. If the new determination is unfavorable, the employee is entitled to a notice of negative determination and notification of the right to reconsideration in accordance with Section 3 of this Article. The Parties agree that any appeal to arbitration which may be filed on the basis of a final decision sustaining a negative determination will be combined with any related grievance which may be concurrently in process.

Section 6. Effective Date/Administrative Error

A WIGI shall be effective on the first day of the first pay period following completion of the required waiting period and the employee meets conditions for eligibility. When due to administrative error, oversight, or delay, a positive determination is made after the waiting period is completed, the effective date of the WIGI shall be retroactive to the original due date. In such cases, interest will be paid in accordance with law and applicable regulations.

Article 23—Disciplinary and Adverse Actions

Section 1. Statement of Purpose and Policy

The Parties agree that the objective of discipline is to correct and improve employee behavior so as to promote the efficiency of the service. The Parties agree to the concept of progressive discipline which is designed primarily to correct and improve employee behavior. A common pattern of progressive discipline is reprimand, short term suspension, long-term suspension and removal. Any of these steps may be bypassed where Management determines by the severe nature of the behavior that a lesser form of discipline would not be appropriate. The Parties further agree that normally, discipline should be preceded by counseling and assistance including oral warnings which are informal in nature and not recorded. Counseling and warnings will be conducted privately and in such a manner so as to avoid embarrassment to the employee. Bargaining unit employees will be subject to disciplinary or adverse action only for just cause.

Section 2. Timeliness of Discipline

If the NMB feels that disciplinary or adverse action is necessary, such action will be initiated timely after the offense was committed or made known to the NMB.

Section 3. Definition of "Day"

For the purpose of this Article, the word "day" means calendar day unless otherwise specified.

Section 4. Reprimand

An official reprimand is a written disciplinary action which specifies the reasons for the action. The reprimand will specify that the employee may be subject to more severe disciplinary action upon any further offense and that a copy of the reprimand will be made a part of both the Official Personnel Folder and the Unofficial Personnel File normally for up to one (1) year by exception for up to two (2) years. If a discussion is to be held when a reprimand is given, the supervisor will advise the employee of his/her right to Union representation prior to the start of the discussion. The letter of reprimand will inform the employee that he/she has the right to file a grievance on the reprimand under the negotiated grievance procedure, and the right to Union representation. Upon request, the employee and/or his/her designated representative will be provided, in a timely manner, copy(s) of the material relied upon to support the reprimand.

Section 5. Short-Term Suspensions

An employee against whom a suspension for 14 days or less is proposed is entitled to:

- an advance written notice of 15 calendar days stating the specific reasons for the proposed action;
- the right to review the material which is relied on to support the reason(s) for the proposed action;
- ten (10) calendar days to respond orally and in writing and to furnish affidavits and other documentary evidence in support of the response; and
- be represented.

The employee will be given a reasonable amount of duty time to prepare and present a response to the proposal. After considering the employee's response, the NMB will issue a written decision. If the decision is unfavorable to the employee, the decision may be grieved, beginning with the last (pre-arbitration) step of the grievance procedure.

Section 6. Removal, Suspension for More Than 14 Days, Reduction-in-Grade, Reduction-in-Pay, and Furlough of 30 Days or Less

An employee against whom such an action is proposed is entitled to:

- advance written notice of thirty (30) calendar days stating the specific reasons for the proposed action;
- the right to review the material which is relied on to support the reason(s) for the proposed action;
- twenty-five (25) calendar days to respond orally and in writing, and to furnish affidavits and other documentary evidence in support of the response;
- and be represented.

The employee will be given a reasonable amount of duty time to prepare and present a response to the proposal.

After receiving the employee's response, the NMB will issue a written decision. If the decision is to effect an action specified in this section, it will specify the reason therefore, the effective date, the action to be taken, and the decision appeal rights. The employee may appeal the decision to the Merit Systems Protection Board or the employee may file a written grievance under the terms of this Agreement. Any such grievance will be initiated at the last pre-arbitration step.

The choice of the appeal forum is irrevocable. An employee shall be deemed to

have exercised his/her option at such time as the employee timely initiates an action under the statutory procedures, or timely files a written grievance at the last pre-arbitration step, whichever occurs first. Any grievance must be initiated no later than 20 days after the effective date of the action. Employees shall be entitled to representation in all phases of these procedures.

Section 7. Request for Information

If requested by the employee or his/her representative, the NMB, in a timely manner, will provide copies of all material including written statements by witnesses relied upon to support the proposal notice.

Section 8. Requests for Time Extensions on Proposals

The NMB will not unreasonably deny a request for extension of the time to respond to proposals.

Section 9. Notice to Union

The NMB will provide the Union, in a timely manner, a sanitized copy of all reprimands and proposals of more serious disciplinary/adverse actions.

Article 24—Grievance Procedure

Section 1—Purpose

The purpose of this Article is to provide a mutually acceptable method for the prompt and equitable settlement of grievances filed by bargaining unit employee(s), the Union or the NMB.

Section 2. Coverage and Scope

A grievance means any complaint:

- by an employee(s) concerning any matter relating to the employment of the employee;
- by the Union concerning any matter relating to the employment of any employee; or
- by any employee(s), the Union, or the NMB concerning:
 - the effect or interpretation, or a claim of breach of a collective bargaining agreement; or
 - any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

Grievances on the following matters are excluded from the scope of this procedure:

- any claimed violation of 5 U.S.C. 73 relating to prohibited political activities
- retirement, life insurance, or health insurance;
- a suspension or removal under 5 U.S.C. 7532 relating to national security;

- any examination, certification, or appointment; or
- the classification of any position which does not result in the reduction in grade or pay of an employee;
- separation and demotion action taken on employees serving on a trial or probationary period.

Section 3. Exclusivity

Grievances may be initiated by employee(s) covered by this Agreement and/or their Union representative or by the NMB. Representation of bargaining unit employees shall be the sole and exclusive province of the Union. This is the exclusive procedure available to bargaining unit employees, the Union, or the NMB for the resolution of grievances.

Section 4. Representation

Upon filing of a grievance, an employee may elect to be self-represented or represented by a Union representative or designee approved in writing by the Union.

The Union has the right to be present during any proceeding under the negotiated grievance procedure. If the Union is not the designated representative, a copy of the grievance will be provided to the Union within five (5) days of the filing date. The NMB will provide the Union reasonable advance notice of any grievance meeting/discussion when the Union is not the designated representative. A copy of each grievance decision will be timely provided to the Union.

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

Scheduling Grievances

For employees on flextime, the Parties agree to schedule all steps in the grievance process during the core hours of the grievant and representative unless the Parties mutually agree otherwise. For employees on a fixed shift, the Parties agree to schedule all steps in the grievance process during the fixed shift of the grievant and representative unless the parties mutually agree otherwise.

In situations where the grievant(s) and representative are on different work schedules and/or locations, the Parties agree to make every reasonable effort to schedule all steps in the grievance process to the common work times of the grievant(s) and representative unless the Parties mutually agree otherwise.

Section 5. Resolution of Grievances and Employee Standing

The Union and the NMB agree that grievances should be settled in an orderly, prompt and equitable manner so that the efficiency of the NMB may be maintained and morale of employees shall not be impaired. Every effort shall be made by the NMB and the Union to settle grievances at the first level of supervision. Employees and their representatives will be unimpeded and free from restraint, interference, coercion, discrimination or reprisal, consistent with 5 U.S.C. 71 and this Agreement, in seeking adjustment of grievances.

Section 6. Grievability/Arbitrability Questions

In the event either Party should declare a grievance non grievable or non-arbitrable, the original grievance shall be considered amended to include this issue. The Parties agree to raise any questions of grievability or arbitrability of a grievance prior to the limit for the written answer in the final step of this procedure. All disputes of grievability/arbitrability shall be referred as threshold issues in the related grievance, except where the Parties agree to hear the threshold issue and merits of the grievance separately.

Section 7. Time Limits

A grievance concerning a continuing practice or condition including EEO matters may be presented at any time. Except as covered in Section 8, a grievance concerning a particular act or occurrence must be presented to the Step 1 management official within 15 working days of the action or date the employee became aware of it.

Proof of service shall be a return post office receipt executed by the person served, or a written acknowledgment from the person served when hand delivered.

All the time limits in this Article may be extended by mutual consent.

Section 8. Options

In accordance with 5 U.S.C. 7121, an employee at his/her option may raise matters covered under Section 4303 (Unacceptable Performance) and 7512 (Adverse Actions) under the appropriate statutory procedures or the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his/her option at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing, whichever event occurs first.

Similarly, an employee affected by a prohibited personnel practice under Section 2302(b)(1) of the Civil Service Reform Act may raise the matter under a statutory

procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his/her option at such time as he/she timely files a grievance in writing or files a written complaint under the statutory EEO procedure, whichever event occurs first.

Before filing a grievance which alleges discrimination, the employee may first discuss the allegation with an EEO counselor. This discussion must be within 45 calendar days after the event causing the allegation or after the date the employee became aware of the event. The counselor shall have 30 calendar days to resolve the matter informally. If the counselor is unsuccessful, he/she will give the employee a written notice stating his/her right to file either a formal complaint under the statutory EEO procedure or a grievance under this procedure. If the employee elects to file under the negotiated procedure, he/she shall proceed under Section 9 of this Article within 15 working days and if the counseling process was used, attach a copy of the counselor's notification to the grievance. The EEO counselor will advise the employee with whom the grievance may be initially filed. For the purpose of this Section, the Step 1 official is the official who took the action which gave rise to the allegation of discrimination or his/her designee.

If this official is also the Step 1 or 2 official identified in Section 9, the grievance will be entered at that step of the grievance procedure. If the official is the Step 2 official, that official will have 15 working days to attempt to resolve the matter and issue a decision.

If the employee does not elect to use EEO counseling, any grievance must be initiated within 45 calendar days of the event which gave rise to the allegation, or after the date the employee became aware of the event, in accordance with the above procedure.

If, during the term of this Agreement, the EEOC changes any time frames or guidelines, they will supersede times frames and guidelines in this Section.

Section 9. Procedures for Employee Grievances

Step 1

A grievance must be submitted in writing preferably, on the standard grievance form provided by the NMB, and presented to the Step 1 management official. The written grievance should normally contain a description of the matter(s) being grieved, include the Article(s) of the Agreement that is involved, and the requested relief, if known.

Within 10 working days after receipt of the grievance, the Step 1 official must hold a meeting, or if one is not requested, issue a decision in writing.

If the meeting is held after the fifth workday, the Step 1 official must issue a decision within five (5) working days after the meeting. The decision will either grant, partially grant, or deny the relief sought. The grievance may be appealed to the Step 2 official within five (5) working days after receipt of the Step 1 decision.

The Step 1 official will forward the grievance material to the Step 2 official as indicated by the grievant's election to proceed to the next step.

Step 2

The Step 2 official is the Chief of Staff. If the Step 2 official is located in the same installation as the grievant, the grievant shall have five (5) workdays to make an oral and/or written presentation.

If the Step 2 official is not in the same installation as the grievant, the grievant shall have 10 workdays to make an oral and/or written presentation.

The Step 2 official or designee will, as speedily as possible, attempt to resolve the grievance and will, within 10 workdays after the presentation date, give a written decision containing the reasons for the decision.

If the decision is not acceptable, the Union may refer it to arbitration in accordance with Article 25 (Arbitration).

If an employee's immediate supervisor is the Step 2 official, the grievance will be considered entered at that step of the grievance procedure. The Step 2 official will review the grievance and decision and either resolve the matter or render a final NMB Step 2 decision.

The employee may feel he or she cannot initially discuss the alleged grievance with the immediate supervisor. If so, the employee may grieve the matter initially with the Step 2 Official. If this is done, it is understood that this is the second step in the grievance procedure.

The Step 2 official listed above may use a designee to complete their responsibilities.

The NMB shall not delegate down in the line function in using designees in the grievance procedure.

Section 10. Union Management Grievance

Either Party may opt to submit grievances through their respective representatives at the national, component, or local levels. Grievances at the national level will be submitted to the NMB Chairman or designee or the Local President or designee as appropriate.

A grievance concerning a continuing practice may be presented at any time. A grievance concerning a particular act or occurrence must be presented to the other Party within 25 working days of the action or date the moving Party became aware of it.

When a grievance is filed, the Parties will meet and/or discuss the matter within 10 working days after receipt unless the grieving Party waives the meeting/ discussion. A written decision will be issued within 10 working days of the meeting or of the date of waiver. If the grievance is not settled by this method, the grieving Party may invoke arbitration within 30 working days after receipt of the final decision. However, prior to invoking arbitration, each Party will consult with appropriate levels within its respective organization. Either Party may move its grievance to

arbitration 45 calendar days after the grievance was filed.

Arbitration awards or grievance settlements shall not be applicable or precedential beyond the jurisdiction of the parties to the grievance, unless the parties at a higher level agree otherwise.

Section 11. Grievance Decision

All grievance decisions will be in writing and state the issue being grieved, a summary of the findings and the rationale for the decision. Copies of relevant documents cited in the decision will be provided if they are not otherwise readily available to the employee.

Section 12. Failure to Meet Requirements

In employee grievances, failure on the part of the NMB to meet any of the time requirements of this procedure will permit the grievance to advance to the next step.

If the grievant after receiving a decision fails to timely pursue the grievance, the grievance shall be terminated. If a decision is not issued, the grievance will not terminate.

Section 13. Withdrawal

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

Article 25—Arbitration

Section 1. Invoking Arbitration

A grievance processed under this Agreement, if unresolved may be referred to arbitration as provided for in this Article. A referral to arbitration can be made only by the Union or the NMB and shall be in writing. Such referral shall be made within 15 working days after receipt of the written decision rendered in the final step of an action processed under Article 24 (Grievance Procedure) or under the conditions specified elsewhere in this Agreement.

Within 10 working days from the date of the request for arbitration, the Parties shall try to define the issue(s). If the Parties fail to agree on a joint submission of the issue for arbitration, each shall submit a separate submission and the arbitrator shall determine the issue or issues to be heard.

Section 2. Selection of Arbitrator for Major Arbitration

Within five (5) working days from the date of the request for arbitration, the Parties will jointly or separately request the Federal Mediation and Conciliation Service

(hereinafter called FMCS) to provide a list of five (5) impartial persons to act as arbitrators from the appropriate geographical area. The Parties will meet within three (3) working days after receipt of such a list. If they cannot mutually agree upon one (1) of the listed arbitrators, then the NMB and the Union will each strike one (1) arbitrator's name from the list of five (5) and will then repeat this procedure. The remaining person will be the duly selected arbitrator.

Section 3. Refusal to Participate

Should either Party refuse to participate in selection, the other Party may select the arbitrator, who shall have authority to render a decision.

Section 4. Procedures

The procedures used to conduct the arbitration shall be determined by the arbitrator. The Union will be entitled to have one (1) representative and one (1) technical advisor at each hearing. Other individuals may attend upon mutual agreement of the Parties.

The arbitrator's fees and expenses will be shared equally by the Parties.

If either Party requests a transcript, the Party will bear the entire cost of such transcript and will furnish one copy to the other Party.

The arbitration hearing shall be held, if possible, on government-controlled property at or near the city where the dispute arose, unless the Parties agree to hold the meeting elsewhere.

The Parties agree to keep the number of witnesses to a reasonable number. If the Union proposes more witnesses than the NMB considers reasonable and the arbitrator concurs, the costs of those unreasonably proposed witnesses shall be borne by the Union.

The arbitrator's decision shall be final and binding. In other than expedited cases, the arbitrator shall make specific findings of fact(s) based on the evidentiary record. However, either Party may file an exception to the arbitrator's award in accordance with applicable law and regulations. The arbitrator will be requested to render the decision as quickly as possible, but in any event not later than 30 days after the conclusion of the hearing, unless the Parties mutually agree to extend the time limit.

If the arbitration award is unclear to either Party, the award shall be returned to the arbitrator for clarification.

Section 5. Effect of Arbitrator's Award

The arbitrator shall have no power to add to, subtract from, disregard, alter or modify any terms of this Agreement.

Section 6. Expedited Arbitration Procedures

The following expedited arbitration procedure is hereby adopted with respect to any grievance which involves:

- an employee's formal performance appraisal, other than demotions or removals for unacceptable performance under 5 U.S.C. Chapter 43;
- final decision to withhold a within-grade salary increase;
- reprimands and suspensions of 14 days or less;
- action imposing sick leave restriction;
- denials of sick leave, annual leave, and LWOP;
- AWOL charges; and
- any other matter mutually agreed upon.

The Parties agree that the primary purpose of this supplemental arbitration procedure is to provide a swift and economical method for the resolution of identified disputes. The Parties agree to take positive action to see that this purpose is fulfilled; and, in addition, the arbitrator shall have the authority to take steps necessary to see that the purpose is fulfilled.

The hearing shall be informal. No briefs shall be filed or transcripts made. A single case should normally not require more than four (4) hours to be heard with each Party being allowed up to two (2) hours to examine witnesses and make opening and closing statements. The arbitrator shall ensure that the length of the hearing is not unnecessarily extended because of irrelevant or repetitious testimony. The arbitrator may also waive the time limits for good and sufficient reasons.

The arbitrator may issue a bench decision at the hearing, but in any event, the arbitrator shall render the decision within 48 hours after conclusion of the hearing. This decision shall be based on the record developed by the Parties before and at the hearing and shall include a brief written explanation of the decision.

The arbitrator's decision shall be final and binding on both Parties. However, either Party may file an exception to the arbitrator's award in accordance with applicable law and regulations.

Section 7. Panel

The Employer and the Union will select a panel consisting of at least two (2) arbitrators. Their expenses and fees will be shared equally by the Parties.

Section 8. Fees for Services and Expenses

The arbitrator will be paid on a per hearing basis plus reasonable study time. Study time will include the arbitrator's written decision on the cases heard. The Parties

agree to set the fee schedule for hearings and study time and review and modify as needed.

Section 9. Cancellation

If an arbitrator accepts an assignment to conduct hearings and hearings are canceled, and the arbitrator is notified at least 48 hours prior to the scheduled beginning of the hearings, the arbitrator shall be paid a cancellation fee.

If the hearings are cancelled within 48 of the scheduled hearings and the arbitrator is notified or if the arbitrator appears at the hearing and the cases are settled or canceled by the Parties without a hearing, the arbitrator shall be paid a cancellation fee plus any reasonable travel and lodging expense incurred.

The arbitrator will bill each of the parties for one-half (1/2) of the total fee and expenses as set by the Parties. Prior to the hearing, the Parties shall give the arbitrator the name, position and address of their designated representative to whom the arbitrator shall forward billings and decisions. It will be the arbitrator's responsibility to make sure that he or she has the information prior to the close of the hearings.

Once the date has been set, any Party that unilaterally requests that an arbitration hearing be postponed, delayed, or cancelled and/or withdrawn (for whatever reason) which results in any fees or expenses, shall pay all such fees and expenses.

Section 10. Appeals

Upon receipt of the Step 2 decision as provided in Article 24 (Grievance Procedure) or Article 23 (Disciplinary and Adverse Action) of the Agreement, the official Union representative may request in writing to appeal the actions to an arbitrator under this expedited procedure. The request must be made within 30 workdays of the receipt of the Step 2 decision.

When two (2) appeals have been filed or one (1) has been pending for more than 90 calendar days, the Parties will jointly contact the next arbitrator from a previously established arbitration panel. If the arbitrator is not available to preside within 20 calendar days, either Party will have the right to request that the next panel member in the rotation be contacted until an arbitrator is obtained.

Article 26—Merit Promotion

Section 1. Purpose

This Section establishes the NMB Merit Promotion Plan, hereafter known as the Plan. The Plan gives procedures for filling vacant General Schedule positions in the Agency. It supplements 5 C.F.R. Part 335 and related Federal regulations applicable to competitive selection, placement, and promotion.

Section 2. Policy

- A. The Plan shall conform, at a minimum, to the requirements of 5 C.F.R. Part 335.
- B. All procedures for promotions shall be in writing and be available to each employee.
- C. Any action leading to promotions—whether identification, qualification, evaluation, or selection—shall be based solely on merit without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, gender, sexual orientation, national origin, non-disqualifying handicap, age, or any other non-merit factor.

Section 3. Merit Promotion Opportunities

A. **Applicant Sources.** As provided in 5 C.F.R. 335.102 and 103(b)(4), Management may select or not select from among the applicants for a merit promotion opportunity and, as appropriate, may select from any other appropriate source. These sources include appointment 1) from an OPM Certificate of Eligibles; 2) under a special employment program, 3) non-competitive reinstatement or transfer; 4) reassignment; 5) change to lower grade; or 6) re-promotion. A vacancy announcement must be prepared and reported to OPM any time the Agency is accepting applications from persons outside the Agency for competitive service positions.

B. **Area of Consideration.** The minimum area of consideration for all merit promotion opportunities shall be Agency-wide.

C. **Announcements.** All merit promotion opportunities shall be announced in writing and distributed to each employee via E-mail. Merit promotion opportunity announcements may be combined with vacancy announcements seeking candidates from outside the Agency. In no case shall the open period of a vacancy announcement or merit promotion opportunity be less than seven (7) calendar days. If a qualified employee is absent from the office during the open period for the merit promotion opportunity, the supervisor shall notify the employee of the opportunity. If the supervisor is unable to timely notify the absent employee, the open period shall be extended for a period not to exceed seven (7) calendar days.

D. **Qualifications.** To be eligible for consideration for a merit promotion opportunity, an applicant must meet the minimum qualification requirements for the position, as prescribed by the Office of Personnel Management, by the time of the closing date of the opportunity.

E. **Special Consideration for Veterans.** Preference eligibles or veterans who have been separated under honorable conditions from the armed forces after three (3) or more years continuous active service may compete for vacancies under merit promotion when the NMB accepts applications from individuals outside its own workforce.

F. **Record-keeping.** The Agency's human resources office shall maintain a temporary record of each merit promotion action sufficient to allow reconstruction of the action. At a minimum, the record shall include documentation of how candidates were rated and ranked. These records shall be destroyed after two (2) years from the date of final action to select or not select, unless there is a pending complaint or grievance in which case the record shall not be destroyed until the complaint or grievance has been resolved.

G. **Disclosure.** Following the final action on a merit promotion opportunity, each applicant shall be informed whether he or she was found to be highly qualified, qualified, or not qualified and, upon request, her or his relative ranking among the candidates.

H. **Maintaining Privacy.** The rankings of candidates for an opportunity shall be kept confidential. Persons with a need to know the rankings, including selecting officials, promotion panel members, panel observers (if any), and human resource staff, shall hold in strict confidence the content of discussions in promotion panel meetings, during selection consideration, during personnel action processing, or at any other time. The promotion files shall be maintained in a locked file or room.

Section 4. Personnel Actions Requiring Merit Promotion Consideration.

A. Internal promotions in the competitive service, including those actions described in B through E below but excepting those described in Section 5 below.

B. Time-limited promotions and details of more than 120 days to higher graded positions. Time spent during 12 months prior to the beginning date of the time-limited promotion in non-competitive details to higher graded positions or positions having such potential shall count towards the 120 days.

C. Selection for training which is a prerequisite for promotion.

D. Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in the competitive service.

E. Transfer or reinstatement to a position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service.

Section 5. Exceptions to Merit Promotion

The following actions are excepted from merit promotion procedures:

- Non-competitive actions, including a promotion resulting from the upgrading of a position due to issuance of a new classification standard or correction of an initial classification error.
- A position change permitted by reduction-in-force procedures.
- Promotions of persons selected under competitive procedures through vacancy announcements, merit promotion opportunities, or other processes

specified in 5 C.F.R. 335.105(c)(3)(i), provided that the announcement, opportunity or other method used specified the promotion potential of the position.

- Promotions resulting from the reclassification of a position due to the accretion of additional duties and responsibilities.
- Career ladder promotions, when the career ladder is identified in writing in the promotion plan or addendum, provided the summary performance rating of record of the person being promoted is at least Fully Successful.
- Temporary promotions of 120 days or less to a higher graded position.
- Promotion to a grade previously held in the competitive service from which an employee was separated or demoted for reasons other than performance or conduct.
- Promotion, reassignment, demotion, transfer, reinstatement, or detail to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service and did not lose for performance or conduct actions.
- Consideration of a candidate not given proper consideration in a competitive promotion action within the agency.

Section 6. Prohibited Practices

A. Managers and supervisors shall not discriminate for or against an employee or applicant for employment or grant any preference or advantage not authorized by law or regulation.

B. No manager, supervisor, or employee shall by action, word, or innuendo discourage any employee from applying for a promotion opportunity.

C. No manager or supervisor shall appoint, employ, promote, advance or advocate for appointment, employment, promotion, or advancement any individual who is a relative if the position is under the jurisdiction of the manager or supervisor.

Section 7. Procedures

The procedures for filling positions through merit promotion opportunities or vacancy announcements are provided in Appendix I.

Section 8. Employee Information

Employees are entitled upon request to the following information about vacancies filled under the competitive provisions of this Article and for which they are/were under consideration.

- The assessment criteria used in filling the vacancy;
- Whether they met the minimum requirements;

- Whether they were Not Qualified, Qualified, or Highly Qualified;
- The name(s) of the employee(s) selected for the vacancy.

Section 9. Review of Competitive Actions

A. All candidates will have equal access to information on merit promotion. The protection of the privacy of other individuals is given first consideration. This does not restrict the rights of an official who has responsibility for investigating, examining, or adjudicating a complaint, from access to needed information.

B. Personal or sensitive matters about an individual will only be released with written consent of the individual concerned to the Union. Requests for information will be evaluated and processed under the provisions of 5 U.S.C. Chapter 71, the Privacy Act, and applicable regulations.

C. After official notification of the selection has been made and within 60 days, an applicant may request, in writing, the following information from Human Resources, who will provide a written response:

1. Whether the applicant was in the group from which selection was made;
2. In what areas, if any, the applicant should improve to increase chances for future selection (this information will be provided by the Selection Official);
3. The evaluation factors (knowledge, skills and abilities needed for successful performance in the position), weights (points) and the procedures used in arriving at the cut-off scores, final scores, and certification.

D. Upon written request by the employee, the President of the Union or designee, who is not an applicant or likely to be an applicant, shall be allowed to review rating and ranking records of members of the bargaining unit who have applied under an announcement and who have specific written complaints.

E. Such a request shall be submitted within 90 days after official notification of the selection. With written permission of the employee, the reviewer designated by the Union may also be allowed access to the employee's Official Personnel File. A representative of the Agency will be made available to answer technical procedural questions. The Union agrees to maintain the confidential nature of the information and not to disclose to the employee or any other employee any information to which he or she is not entitled.

Section 10. Career Pathways

The Parties will explore various means of enhancing career opportunities, including but not limited to individual development, details for training, career counseling, broad banding, and training for intra-agency movement across career specialties.

The Parties recognize that use of some of these opportunities may require competition.

Section 11. Priority Consideration

The Parties agree that an employee in the bargaining unit who was determined not to have been given proper consideration in a competitive promotion action shall be entitled to priority consideration for future vacancies for which the employee is well qualified and which has no greater promotion potential than the position for which the employee failed to receive proper consideration. Such priority consideration shall be afforded without regard to competitive procedures.

An employee who is entitled to priority consideration shall receive advance notice of vacancies in the bargaining unit and shall have three (3) days from the date notified to request priority consideration. The vacancy shall not be advertised until the eligible employee is given due consideration. Management may decline to select the eligible employee if it determines the employee is not well-qualified or is able to articulate another merit-based reason.

Nothing in this Article shall restrict the employee from also applying for the position under the vacancy announcement.

Section 12. Temporary Positions

When employees are temporarily assigned to a position of a higher grade for a period in excess of 30 days, the assignment must be made via temporary promotion effective the first day of the assignment.

For the purposes of this Section, when dealing with temporary assignments to a position of higher grade for a period in excess of 30 days, a General Schedule employee who performs the grade-controlling duties of a higher-graded position for at least 25 percent of his/her time, or a Wage Grade employee who performs higher-graded duties on a regular and recurring basis, shall be temporarily promoted.

NMB MERIT PROMOTION PLAN

Appendix I

PROCEDURES

1. **Selection Method.** Management shall determine the methods used to fill vacant positions.
2. **Vacancy and Merit Promotion Opportunity Announcements.** All competitive service vacancies open to persons outside the agency shall be reported to OPM. All vacancy and merit promotion opportunity announcements shall meet the requirements necessary for announcements posted to the USAJobs web site maintained by the OPM, even if the announcement is for a Merit Promotion Opportunity not reported to OPM and announced on the USAJobs site.
3. **Area of Consideration.** At a minimum, the area of consideration shall be the National Merit Board. At its discretion, in order to have a sufficient number of high quality candidates, the area of consideration may be broadened to include other Federal career and career-conditional employees, either in the Washington, DC metropolitan area or nationwide, or be opened to the public through a vacancy announcement.
4. **Open Dates for Announcements.** Announcements shall be open for such periods of time as management determines, subject to the following minimums: 1) seven (7) calendar days when the area of consideration is the NMB; 2) 14 calendar days when the area of consideration is the Washington, DC metropolitan area; and 3) 21 calendar days when the area of consideration is nationwide. No extensions of time shall be granted to any applicant, unless the announcement is reissued and made available to all potential applicants.
5. **Applications.** Applicants should furnish only the information specified in the Merit promotion opportunity or vacancy announcement, so that all applicants will be on an equal footing during consideration. Material not requested, including references, work samples, or other extraneous materials not specified in the announcement, will be destroyed.
6. **Receipt of Applications.** Applications may be hand-delivered by the closing date, mailed, or sent by an alternative carrier. They may not be sent by facsimile. Applications not hand-delivered must be postmarked or received by an alternative carrier no later than the closing date of the announcement and received by the NMB no later than seven (7) calendar days following the closing date.

7. Consideration of Applications.

A. **Initial screening.** Human Resources staff will screen applications to determine if applicants meet the minimum qualification requirements for the position. Applicants who do not meet the minimum qualifications, as determined by the Human Resources staff, will not receive further consideration.

B. Evaluating applicants.

1. When there are five (5) or fewer qualified applicants for an announced vacancy, a member of the Human Resources staff and a subject-matter expert shall compare the education and experience of each applicant to the KSA's in the announcement. All applicants who have experience and/or education in each KSA shall be considered "Best Qualified" and referred for interview by a panel appointed by the Chief of Staff. This provision shall not apply to persons on an OPM Certificate of Eligibles.
2. When there are more than five (5) qualified applicants for an announced vacancy, a panel of at least three (3) employees shall review the application and rank them as Best Qualified or Qualified, and review and confirm the Human Resources staff's determination of those it has considered Not Qualified. The referral shall be in alphabetical order. The employees reviewing and ranking the applications shall be at a grade level equivalent to or higher than the promotion potential of the position being announced.
3. Internal candidates for merit promotion who have been identified as Best Qualified shall be placed on a Merit Promotion Certificate and referred to the Chief of Staff, who shall make a selection from the Certificate or decline to use it within 90 days. The Chief of Staff may choose to interview the Best Qualified candidates or refer them to an interview panel. If one candidate among the Best Qualified group is interviewed, then all must be interviewed.
4. Interview panels may be used to interview applicants for both vacancy and merit promotion opportunity announcements. The panels act as advisers to the Chief of Staff and are established solely for the purpose of interviewing Best Qualified candidates and recommending one or more for selection. Interview panels appointed by the Chief of Staff for non-supervisory positions will consist of Agency employees. At the discretion of the Chief of Staff, interview panels for supervisory and managerial employees may include employees of other agencies or be private sector representatives with significant knowledge of Agency programs or the subject-matter of the position being filled. If the position being filled is in the bargaining unit, a representative of the bargaining unit may observe the proceedings of the interview panel.
5. Interview panels shall recommend one or more candidates to the Chief of Staff for selection. The Chief of Staff may or may not conduct further interviews and may or may not accept the recommendation of the interview panel.

Article 27—Details/Reassignments

Section 1. Details

A detail is the temporary assignment of an employee to a different position or duty station in the NMB or a position at a different agency for a specific period, with the employee returning to his/her regular duties or duty station at the end of the detail. Should the NMB decide to detail a bargaining unit employee during the term of this Agreement, the provisions of Article 4 will be invoked.

Section 2. Reassignments

When an employee is permanently reassigned to a different position, the employee will be given a reasonable period in which to become proficient. If he or she cannot attain satisfactory performance, serious consideration will be given to reassigning the employee back to the previous position or a new position at the same grade level.

Section 3. Assignment of Duties For Medical Reasons

Upon request, the NMB will make a reasonable effort to assign limited duties to an employee who is temporarily unable to perform the full range of his/her assigned duties because of medical reasons. The NMB may require sufficient medical documentation in support of the request.

Article 28—Classification

Section 1. General

The Parties agree that position descriptions shall accurately state the principal duties and responsibilities of the position. The Parties further agree that the employee's performance plan will contain job elements and standards consistent with the position description, the Agency's mission, and the Agency's long range strategic and annual performance plan.

Section 2. Position Description

The NMB will maintain a complete and up-to-date file of position descriptions of all classified positions in the bargaining unit and will provide each employee with a copy of his/her position description.

When an employee has a question concerning the proper classification of his/her position, the employee will discuss the situation with his/her immediate supervisor. If the immediate supervisor cannot resolve the employee's concerns to the employee's satisfaction, the employee may request that the supervisor arrange for the Human Resources Officer or, if the Human Resources Officer is not available in a timely manner, the Servicing Personnel Office (GSA) to provide further information to the employee.

If a classification inquiry results in an audit, the employee will be afforded an

opportunity to discuss the results and analysis of the classification audit with his/her immediate supervisor. If the immediate supervisor cannot resolve the employee concerns to the employee's satisfaction, the employee may request that the supervisor arrange for the Human Resources Officer or, if the Human Resources Officer is not available in a timely manner, the Servicing Personnel Office (GSA) to explain the results of the audit. The request will normally be honored. Both Parties recognize that an audit may result in an upgrade, a downgrade, or no change.

If a classification audit is determined to be appropriate, the Union will be notified as to the anticipated starting date of the audit. The initiating employee will be provided the results of the classification audit upon completion thereof. Upon request, the Union will be provided a copy of all official information relating to the classification of a position, including but not limited to the position description, analysis/evaluation reports (if available), appropriate position classification standard or standards, scoring method used, and subsequent results.

The impact of classification activities on an employee(s) will be bargained in accordance with all applicable law and regulation and Article 4 of this Agreement.

Section 3. Classification Appeals

Upon request, the NMB will provide any employee information on the procedures for filing classification appeals to the NMB or OPM.

An employee who files a classification appeal to the NMB or OPM is entitled to a copy of the position description, analysis/evaluation reports (if available), and any other official information related to classification of the position.

Employees who file classification appeals to the NMB will have their appeals decided within a reasonable period of time. Upon request, the initiating employee and/or his/her Union representative will be provided a copy of the classification appeals file.

Section 4. Effective Date

Changes in grade level based on reclassification resulting from action other than OPM appeals will be effective on the first pay period following final approval of the action.

Article 29—Labor-Management Committee (LMC)

Section 1. Introduction

The Parties agree that there will be a Labor-Management Committee (LMC), which will meet regularly to share information and to attempt to resolve issues arising under this Agreement at the earliest pre-decisional stage. To the extent possible, the LMC will use an interest-based approach to resolving problems and issues.

Section 2. Membership

The LMC will consist of six (6) permanent members—three (3) from Management and three (3) from the bargaining unit. Alternates will be named to substitute for permanent members when needed.

Section 3. Meetings

Meetings will be held quarterly or as required. Five (5) workdays before the meeting, a written agenda agreed upon by the COS or his/her designee and the Union representative will be distributed by e-mail to LMC members. The agenda will include the issues to be discussed and the time and place of the meeting.

Section 4. Minutes

An LMC member will be designated to take notes during each meeting. He or she will be responsible for preparing and distributing the minutes. The minutes will be maintained as a permanent record of the LMC's meetings.

Article 30—Official Time

Section 1. Policy Statement

Union officials and stewards have the responsibility of carrying out representative duties as provided for in the Civil Service Reform Act of 1978 and of working with supervisors to resolve issues and concerns. The Parties agree that Union officials and stewards should be authorized time to perform those duties. Such time will be adequate to represent bargaining unit employees and administer this Agreement with the NMB in a cooperative manner.

Section 2. Designation

The Union will provide the NMB with lists of designated Union officials at the respective levels after the effective date of this Agreement and notify the NMB of subsequent changes. The Union will also provide, on a current basis, a list of stewards, committee members and other authorized representatives. These lists will include each designee's name, location, and telephone number. The NMB recognizes the following as designated Union officials: two (2) Union stewards and other committee or specialized representatives as detailed in the Agreement.

Section 3. Allegations of Abuse

Alleged abuses of official time shall be brought to the attention of an appropriate management official on a timely basis by supervisors and management officials. The management official will then discuss the matter with the Local President as appropriate.

Section 4. Official Time

Grievants and witnesses will be granted a reasonable amount of official time for the purpose of preparation and presentation of arbitration and grievances under this Agreement.

The Parties agree that official time is not appropriate for use by a Union

representative for work performed at home or outside the time the Union representative would otherwise be in duty status. This Section is not intended to preclude a remedy of straight time in accordance with case law.

Section 5. Representational Functions

A. Official time will not be granted for internal Union business in accordance with 5 U.S.C. 7131(b).

B. Official time will be used for representational activities initiated by the Union. A bank, or finite limit of official time will be used for representational activities. The bank is limited to 300 hours per year. Time will be charged in increments of 30 minutes.

Appropriate activities for use of official time are as follows:

- 1.) to confer with employees or groups of employees with respect to any matter for which remedial relief may be sought pursuant to the terms of this Agreement, including exploratory meetings to determine whether it is appropriate to seek remedial relief;
- 2.) to prepare grievances;
- 3.) to prepare witnesses;
- 4.) to review documents that are not available during non-duty hours;
- 5.) to prepare a reply to a notice of proposed disciplinary, adverse or unacceptable performance actions;
- 6.) to prepare for arbitration;
- 7.) to prepare a reconsideration statement in connection with the denial of a within-grade increase;
- 8.) to meet with national staff representatives of the Union in connection with a grievance, arbitration or Unfair Labor Practice (ULP) charge;
- 9.) to participate in an authority investigation or hearing preparation as representative of the Union;
- 10.) to travel to and from meetings for which the steward receives official time;
- 11.) to prepare for Labor-Management Committee (LMC) meetings and negotiations;
- 12.) to participate in training designed primarily to further the interest of government by bettering the labor-management relationship (this is available to all non-Steward officials as well);
- 13.) to prepare and maintain records and reports required of the Union by Federal agencies;

- 14.) to maintain financial records and books required to complete IRS reports;
- 15.) to chair committee meetings;
- 16.) to conduct training on labor relations issues for employees not to exceed two (2) hours quarterly (non-cumulative); and
- 17.) to attend regularly scheduled Union events, i.e., training, convention, and other such regularly scheduled activities of which Management is notified in advance.

C. Time for the following activities will be made available to properly designated representatives, who would otherwise be in duty status. Consistent with 5 U.S.C. 71 and this Agreement, Union designees will be granted reasonable and necessary time to carry out the following functions:

- Term agreement bargaining in accordance with 5 U.S.C. 7131(a) and this Agreement;
- Mid-term consultation and/or bargaining on Management-initiated changes;
- FLRA and MSPB proceedings;
- Representation of bargaining unit employees who have filed formal complaints under the statutory EEO procedure;
- Management-initiated grievances.

1. Attendance at meetings for the purpose of presenting replies to the proposed termination of probationers;
2. Attendance at oral replied-to notice of proposed disciplinary, adverse or unacceptable performance actions;
3. Attendance at meetings to present appeals in connection with statutory or regulatory appeal procedures in which the Union is designated as the representative;
4. Attendance at meetings for the purpose of presenting reconsideration replied in connection with denial of within-grade increases;
5. Attendance at examination of employees in the unit by representative(s) of the Employer in connection with an investigation if:
 - (1) the employee reasonably believes that the examination may result in disciplinary action against the employee; and
 - (2) the employee requests representation;
6. Attendance at grievance meetings and arbitration hearings;

7. Attendance at meetings of committees on which Union representatives are authorized membership by the Employer.
8. Attendance at midterm negotiations;
9. Travel to any of the activities above; and
10. Attendance at the NMB recognized activities to which the Union has been invited.

Section 6. Release Procedures

A. Union designees as identified in Section 2 will secure the approval of his or her immediate supervisor before performing labor-management duties. The supervisor shall approve the request for official time, unless there is a mission requirement that would temporarily delay the departure. When such temporary delays occur, the Parties will arrive at a mutually agreeable time for departure. The Union designee will be given time to inform any bargaining unit employees involved in the delay.

B. When the Union designee leaves the work site on Union business, he or she will notify the supervisor of the purpose of the absence, departure time, and anticipated return time. The Union designee will notify the supervisor upon their return. Upon entering a work area other than his or her own to meet with an employee, the designee will advise the supervisor of his or her presence, the employee to be contacted, and the estimated duration of the meeting.

- Employees will be given reasonable time to meet with their Union representative to discuss matters covered by this Agreement. The employee will obtain approval of his or her supervisor before meeting with a Union representative.

Section 7. Official Time Record

In accordance with Section 4 of this Article, Union officials will complete all required portions of the Official Time Record.

Article 31—Time and Leave

Section 1. General Leave Policies and Practices

A. Employees will be entitled to accrue and use leave in accordance with this Agreement.

B. Employees must apply in advance for approval of all anticipated leave. Leave requests and approval or denial will be made in writing on Form SF-71. The leave approving official will respond to all leave requests in a timely manner.

C. When an employee has not received advance approval for leave and does not report to work, the employee must notify (directly or by leaving a message) his/her leave approving official and request appropriate leave, normally by 9:30 a.m. The leave approving official will approve or deny the leave requested.

In the event the employee does not report during the reporting period, the manager will not record the leave status until the end of the scheduled work day, except for the need to process time records. If the employee's leave status has not been clarified by the end of the work day, the absence may be charged to AWOL at Management's discretion. This will not preclude a later change in leave status for good and sufficient reason(s).

D. Employees will accrue leave in accordance with government-wide rules and regulations.

E. All absences will be charged in increments of ½ hour.

F. Employees will not be denied leave usage solely because of their leave balance.

G. Leave will not be denied as a disciplinary measure.

H. The Agency will not force employees to use personal leave against their will in a manner inconsistent with Government-wide rules and regulations.

Section 2. Annual Leave

A. Annual leave is provided and used to allow employees an annual vacation of extended leave for rest and recreation and to provide periods of time off for personal and emergency purposes. The use of accrued annual leave is the right of the employee, subject to the right of the employer to approve the time at which leave may be taken. Employees must apply in advance for approval of all anticipated leave to permit the orderly scheduling of leave and to avoid leave forfeiture which might otherwise result.

B. Leave requested in advance will be granted except when there is an operational exigency that would preclude it. Leave may also be granted when it is not scheduled in advance and business permits. Leave for personal emergencies will be granted unless there is an operational exigency which requires the employee's presence.

C. When "use or lose" leave is requested in writing before the start of the 6th biweekly pay period prior to the end of the leave year and cannot be approved or used prior to the end of the leave year, the excess annual leave will be restored in accordance with applicable rules and regulations and carried over into the next leave year. Restored leave should be used first when leave is requested and used.

D. Employees are encouraged to prepare and submit an annual leave plan to the supervisor by March 1 of each year. In any case, the leave approving official

should timely request an advance schedule for leave for periods of high annual leave usage, including extended periods of leave and leave around holidays. Leave approval/denial will be provided within 15 working days after the request. When scheduling conflicts arise, managers should first allow the employees involved to attempt to resolve the conflict among themselves. Remaining conflicts will be resolved using a rotational system of Service Computation Dates (SCD). If there is one date in conflict, the employee with the earliest SCD will be approved. If multiple dates are in conflict, the employee with the earliest SCD will choose first, the employee with the next earliest SCD will choose second, etc., until all conflicts are resolved.

E. Employees, upon request and with the approval of the manager, may change previously authorized annual leave to sick leave in accordance with Section 3 of this Article.

Section 3. Sick Leave

A. The use of sick leave is an employee benefit. The Agency will grant accrued sick leave and may grant advanced sick leave to an employee when the employee:

1. Receives medical, dental, or optical examination or treatment;
2. Is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth;
3. Provides care for a family member as defined in Section 6.A.3., as a result of physical or mental illness, injury, pregnancy, childbirth, or mental, dental, or optical examination or treatment, or
4. Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or
5. Must be absent from duty for purposes relating to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys, court proceedings, required travel, and any other activities necessary to allow the adoption to proceed when such usage is consistent with regulations regarding the use of sick leave.

B. Employees normally will not be required to furnish a medical certificate (SF-71 medical certification or equivalent) to substantiate a request for approval of sick leave unless sick leave exceeds three (3) consecutive work days.

- 1.) In cases where the nature of illness was such that an employee did not need to see a medical practitioner, a medical certificate will not be required unless the employee is on restricted sick leave or there is reason to believe that the employee was not entitled to sick leave.
- 2.) In individual cases, if there is evidence that an employee's leave pattern (e.g., frequency, "Monday/Friday" usage, etc.) gives sufficient reason that an abuse of sick leave exists, the employee will first be advised by an interview and counseled that he/she may be placed on restricted sick

leave. If the employee's leave pattern continues, the employee will be advised in writing that all future requests for sick leave must be supported by a medical certificate.

The sick leave record of all employees under sick leave restriction will be reviewed at least every six (6) months and lifted if the abuse has discontinued. If the leave abuse resumes within a 6-month period following its being lifted, the employee may again be placed on leave restriction.

- 3.) An employee with a chronic medical condition that does not require medical treatment but does result in periodic absences from work for three (3) consecutive days or more will not be required to furnish a physician's certificate on a continuing basis if the employee: 1) is not on leave restriction, and 2) provides, if requested, an updated valid medical certificate every six (6) months which clearly states the continuing need for the periodic absences.

C. In addition to any bereavement leave authorized under Section 5, employees are entitled to use 40 hours of their sick leave per calendar year to care for, or to make arrangements for, or attend the funeral of, the following family members:

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

In addition to the 40-hour basic entitlement, full-time employees who have a sick leave balance of 80 hours (after use of the 40 hours) may use an additional 64 hours of sick leave, bringing the maximum yearly allowance to 104 hours; or, in the case of a part-time employee, the number of sick leave hours normally accrued during a leave year. Part-time employees may use sick leave according to the average number of hours worked per week. For example, an employee who works 20 hours a week would be allowed to use 20 sick leave hours per year (basic entitlement) and an additional 32 hours of sick leave provided that he/she has a sick leave balance equal to twice the average number of hours in the weekly tour of duty (40 hours).

C. An employee who expects to be absent more than one day will inform the manager (or designee) of the expected date of return to duty and notify the manager of any changes. In such cases, daily reports will not be required. In the case of extended illness, the employee will inform the manager as soon as he/she becomes aware of an expected return to work date.

Section 4. Advance Annual/Sick Leave

A. Advance annual leave is leave time requested on an SF 71, approved by the

delegated authority, and taken but not yet earned by the employee. An employee may be advanced all annual leave that will accrue up to the end of the leave year. However, advance annual leave may not be granted to a temporary employee beyond the date set for the expiration of his/her temporary appointment; or to any employee if there is a likelihood that he/she will retire, be separated, or resign from the NMB before the date when he/she will have earned the leave. Upon separation, employees must repay any annual leave advanced and not earned at the time of separation (except for separation due to death or disability retirement).

B. Sick leave up to a total of 30 days may be advanced in cases of serious disability or ailment and when required by the exigencies of the situation. The leave approving official must be assured that the illness is serious and that an exigency exists. An employee's request for advanced sick leave must be in writing. The request must be supported by a medical certificate. Sick leave cannot be advanced when it is likely the employee will retire, be separated, or resign before the advanced leave will be earned. Advanced sick leave may be granted irrespective of whether the employee has annual leave to his/her credit. It may be combined with annual leave when necessary to cover one continuous period of absence.

C. Denials of requests for advance leave must be conveyed to the employee promptly and must contain a specific explanation of the reasons for the denial.

D. Annual leave or sick leave earned on a current basis may not be used until all advance leave has been liquidated.

Section 5. Bereavement Leave

A. Upon request, subject to any documentation requirements, leave approving officials will approve up to three (3) days of absence without charge to leave or loss of pay for employees to mourn the death of the following family members:

1. Spouse;
2. Children, including adopted and step-children;
3. Parents, including stepparent;
4. Siblings, including stepbrother/sister; and
5. Any individual related by affinity, i.e., whose association with the employee is the equivalent to one of the family relationships identified above.

B. Upon request, subject to any documentation requirements, leave approving officials will approve one (1) day of absence without charge to leave or loss of pay for employees to mourn the death of a grandparent or parent of their spouse.

C. The manager, at his/her discretion, may require documentation (e.g., obituary, death certificate) prior to final approval of bereavement leave. However, this

documentation will normally be required only in unusual circumstances.

Section 6. Family and Medical Leave

A. Under the Family and Medical Leave Program (FMLP), a bargaining unit employee is entitled to a total of six (6) months Leave Without Pay (LWOP) during any 12-month period for one or more of the following reasons:

1. The birth of a son or daughter of the employee and the care of such son or daughter;
2. The placement of a son or daughter with the employee for adoption or foster care;
3. The care of a family member of the employee with a serious health condition. Family member is defined as:

- a. spouse and parents thereof;
- b. children, including adopted children, and spouses thereof;
- c. parents; and
- d. brothers and sisters and spouses thereof.

4. A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position;
For either of the reasons listed in 1. and 2. above, the LWOP may be extended, upon request, for an additional six (6) months.

B. The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

1. Any period of incapacity or treatment in connection with, or consequent to, inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility.
2. Any period of incapacity requiring absence from work, school, or other regular daily activities of more than three (3) calendar days that also involves continuing treatment by (or under the supervision of) a health care provider.
3. Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that if not treated would likely result in a period of incapacity of more than three (3) calendar days; e.g., medical treatment of substance abuse, including alcohol, or for prenatal care.

C. Substitution of Paid leave

1. The employee may elect to substitute annual leave, sick leave, advanced

annual leave, advanced sick leave for unpaid family or medical leave for any part of the applicable period consistent with governing laws and regulations. An employee may not retroactively substitute paid leave for unpaid family and medical leave. An employee may continue to use earned compensatory time and credit hours, subject to normal supervisory approval, in addition to her/his entitlement to leave under the FMLA.

When an employee invokes entitlement under FMLA for her or his own health condition, he/she may substitute any or all accrued sick leave to his/her credit for LWOP. When an employee invokes entitlement to care for a family member as defined in Section 3.C. above, the employee may substitute her/his leave for LWOP, subject to the limitations outlined in Section 3.C.

2. An employee may request to use leave on an intermittent basis or under a reduced leave schedule when medically necessary. The employee must consult with the manager and make a reasonable effort to schedule intermittent LWOP and/or paid leave so as not to disrupt the operations of the Agency.

D. Notice of Leave

1. Requests for use of family and medical unpaid leave under the FMLP will be made in writing on Form SF-71. The employee must include the following statement in Item 6 (Remarks) of the SF

71: "I request absence under FMLP for (birth/care of child; adoption/foster care; care of family member; or personal health reasons), as appropriate."

2. When the need for unpaid family and medical leave is foreseeable, the employee will provide 30 days notice of intent to take leave. Otherwise, the employee will provide such notice as is practicable. If the need is foreseeable and the employee fails to give 30 days notice with no reasonable excuse for the delay of notification, the Agency may delay the taking of family and medical unpaid leave until at least 30 days after the date the employee provides notice of his or her need for family and medical leave.

E. Medical Certification—When Requesting Leave For Serious Health Conditions

1.) An employee will provide written medical certification to the Agency in a timely manner.

2.) The written medical certification will include:

a. The date the serious health condition commenced;

b. The probable duration of the serious health condition;

c. The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a statement as to the incapacitation, examination, or treatment that may be required by a health care

provider; and

d. A statement that the employee is unable to perform the essential functions of her/his position. The Agency may supply information regarding essential job functions to the employee's medical care giver.

3.) The Agency will not require any personal or confidential information in the written medical certification other than that required by paragraph E.2. above.

4.) If the Agency doubts the validity of the original certification, the Agency may require, at the Agency's expense, that the employee obtain the opinion of a second health care provider designated or approved jointly by the Agency and the employee concerning the information certified under paragraph E.2. above.

5.) If the opinion of the second health care provider differs from the original certification, the Agency may require, at the Agency's expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the Agency and the employee concerning the information certified under paragraph E.2. above. The opinion of the third health care provider will be binding on the Agency and the employee. The definition of "health care provider" will be consistent with the provisions of the Family and Medical Leave Act (FMLA).

6.) To remain entitled to family and medical leave, an employee or the employee's spouse, son, daughter, or parent must comply with any requirement from the Agency that he or she submit to examination (not treatment) to obtain a second or third medical certification from a health care provider other than the individual's health care provider.

7.) If the employee is unable to provide the requested medical certification before leave begins, or if the NMB questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the NMB will grant provisional leave pending final written medical certification.

8.) If, after the leave has commenced, the employee fails to provide the requested medical certification, the Agency may:

a.) Charge the employee as AWOL, unless:

(1) the reason for not providing the medical certification was beyond the control of the employee; or

(2) the employee made a good faith effort to provide the certification.

Prior to being placed on AWOL, an employee will be provided written advance notice of at least 10 working days and given the reasons why AWOL is being charged. During this period, the employee may comply with the Agency's request; and, if so, the AWOL charges will be rescinded.

b.) Allow the employee to request that the provisional leave be charged as LWOP or charged to the employee's annual and/or sick leave account, as appropriate.

9.) Any health care provider designated or approved by the Agency will not be employed by the Agency.

F. Medical Re-certification

While an employee is on family and medical leave, the Agency may require, at the Agency's expense, subsequent medical recertification from the health care provider only if the circumstances described in the original medical certification is subject to change significantly, or if the Agency receives information that casts doubts upon the continuing validity of the medical certification. Such requests for medical re-certification will not occur more frequently than every six (6) weeks.

G. An employee eligible under the NMB's FLMP may request to participate in the NMB Work-At-Home by Exception program consistent with Article 12 of this Agreement, as appropriate.

H. Protection of Employment and Benefits

Upon return from family and medical leave, the employee will be restored to the same position as he/she occupied before the leave or an equivalent position, with equivalent benefits, pay, status, and to the extent possible, other terms and conditions of employment.

I. When an employee requests leave under FMLP, the Agency will provide guidance concerning the employee's rights and obligations under the Program.

J. An employee who meets the criteria for leave and has complied with the requirements under this section may not be denied leave, consistent with all applicable rules governing annual or sick leave, as appropriate.

Section 7. Official Closing Due to Inclement Weather or Other Emergency Conditions

A. General Provisions

1. **Overview.** These general provisions apply to all NMB employees, regardless of official duty station. All employees are to presume that the NMB's offices are open each regular workday unless a specific announcement to the contrary is made. Although employees are expected to be prepared to deal with most emergencies, conditions might occur which will make closing necessary. The decision to close the office will be as a result of hazardous conditions that the majority of employees might face while reporting to their workplace or returning home. A decision on a late opening or full-day closing and announcements will be broadcast through local news or recorded for employees telephone access as early as possible. Employees should listen to designated radio or television stations, or phone into the designated number(s) for instructions.

2. **Full-day Closing.** When a decision is made to close the NMB's offices for a full day by administrative order due to inclement weather or other conditions warranting such closing, employees not required to work, including employees previously authorized annual or sick leave, will not be charged leave.
3. **Early Dismissal.** When a decision is made to dismiss employees early during the workday, employees not involved in essential services, who depart at the time of the dismissal, will be excused without charge to leave or loss of compensation for the remainder of their tour of duty for the day. Employees must be on duty part of the day when an early dismissal is authorized in order to be entitled to any period of excused absence. In the event an employee in a duty status on the day of an early dismissal requests leave/LWOP and departs before the official dismissal time, leave will be charged only up to the time of the early dismissal.
4. **Liberal Granting of Leave.** When inclement weather or another emergency condition exists, but when a late opening or early dismissal has not been officially authorized, leave approving officials will be as liberal as possible in approving requests for leave/LWOP.
5. **Employees With Mobility Impairments.** During periods of inclement weather or other emergency conditions, leave approving officials will give special consideration to employees with temporary and permanent mobility impairments; i.e., these employees may be granted excused absence even when the NMB is officially open.

B. Procedures for Washington, D.C. Office

1. NMB's Washington, D.C.-based employees are governed by the inclement weather/emergency closing procedures promulgated by the United States Office of Personnel Management (OPM) in a memorandum dated January 21, 1997, subject to the provisions outlined below.
2. On days where OPM's media announcement indicates that an Adjusted Home Departure schedule is in place, employees who request leave for the entire day will be granted excused absence equal to the number of hours announced in the "Adjusted Home Departure" statement and will be charged leave only for the remaining portion of their tour of duty for that day.
3. On days where an Adjusted Home Departure schedule is announced, a liberal leave policy will automatically be in effect, i.e., employees may take annual leave or LWOP without prior supervisory approval. Annual leave or LWOP requests will be approved for those employees who wish to remain home for the full day or who wish to depart prior to the end of their tour of duty.
4. When the opening of the Agency is delayed due to hazardous weather or other conditions beyond the control of the Agency, all employees in the affected building(s) will revert to an 8:30 a.m. fixed starting time for that day. Ending time(s) will depend on the employees scheduled daily tour for that day.

C. Procedures for Chicago Office

1. Inclement weather/emergency closing procedures for Chicago employees are set locally by the governing Federal Executive Board (FEB). To the extent to which the NMB has an opportunity to influence the Chicago FEB, in which it has no membership, the Union will be offered the opportunity to make suggestions regarding closings.
2. Chicago employees are subject to the "General Provisions" outlined in A. above, unless different local procedures have been mutually agreed to by the Parties.

Section 8. Adjustment of Work Schedules for Religious Observances

A. Requests for Religious Compensatory Time (RCT) will be granted unless approval of the request would interfere with the timely and efficient accomplishment of the unit's work or would prevent the availability of a sufficient number of employees to perform the unit's work.

B. Employees must request approval of RCT for religious observances from the appropriate approving manager in advance and in writing. All requests will be submitted on an SF-71 (to include appropriate attachments). Requests must include all of the following information:

1. The dates(s) and number of hours requested;
2. In the space provided for remarks, the employee must state, "this leave is because my personal religious belief requires me to refrain from work for a religious observance for (this day) or (portion of the day)"; and
3. The proposed dates(s) on which the religious compensatory work will be performed.

C. During the months of February and August each year, employees will submit requests for RCT for the 6-month periods of April through September and October through March, respectively. Such written requests should be submitted to the appropriate approving manager by the last day of February and August respectively.

D. When requests for religious time off are submitted after February or August scheduling periods, the requests will be considered on a first-come, first-served basis.

E. Only after the manager approves both the employee's request for RCT and her/his religious compensatory work schedule will the employee work RCT. While the employee's request to work at specific times must be considered, authority for scheduling the time to be worked is vested in the manager. The religious compensatory work schedule will be approved at the same time the request for RCT is approved. Where it is not possible to schedule the work concurrent with the approval of the request for RCT, the manager will make the decision to schedule the work as the work is needed, but within the allotted time period specified. It is the employee's responsibility to take advantage of the opportunities offered or to

obtain advance approval to work at other times.

F. All RCT must be worked within the 13 pay periods in advance of the religious event.

G. Employees may be allowed to accumulate RCT in increments of at least 1/4-hour per day.

H. Earned RCT is forfeited unless used for the religious observance on the date designated on the SF-71, except in the following circumstances:

1. If the employee is precluded by personal illness or an exigency of the public service as declared by an authorized official from using earned RCT for the designated day, its use may be deferred.
2. If the employee requests RCT for another religious observance, any unused earned RCT must be used for that observance.

Section 9. Excused Absence (Administrative Leave)

A. Excused absence (sometimes referred to as administrative leave) is absence from assigned duties without charge to leave or loss of pay. The Parties agree that excused absence may be granted for activities which are in the government's interest.

Community service is one of the most important ways we demonstrate that we care for and are responsible for one another. It is also an American tradition that we meet our challenges as members of a true community with all of us working together. Many Federal employees have been generous with their time and talents and have made positive contributions to their local communities, even as they have fulfilled their official responsibilities.

Employees seeking to participate in volunteer activities during basic working hours may be granted either annual leave, leave without pay, or compensatory time off. Granting of excused absence (administrative leave) may be authorized for officially sponsored or sanctioned community service activities by the NMB Chief of Staff.

B. Employees will be granted up to four (4) hours of excused absence to donate blood to a NMB-sponsored or endorsed blood program. Such leave time will only be for the amount of administrative leave time necessary to travel to the donation site, donate blood, recuperate at the donation site, if needed, and return to work if the employee's tour of duty is not over. Additional excused absence will be granted to employees who donate blood platelets through HCFA-endorsed Hemapheresis Programs (e.g., through the American Red Cross Hemapheresis Program).

C. Upon request, subject to certification by a physician, leave approving officials will approve excused absence for employees who serve as living donors for bone marrow, organ and tissue donation and transplantation. The use of excused absence can cover time off for activities such as donor screening, the actual medical procedure, and recovery time. Leave approving officials will approve:

1. up to two (2) workdays of absence without charge to leave or loss of pay for each donation by employees participating as living bone marrow donors;
2. up to 20 workdays of absence without charge to leave or loss of pay for employees participating as living organ or tissue donors.

The length of absence from work can vary depending on the medical procedure involved in the donation. Therefore, for longer periods of incapacitation, leave approving officials will approve annual and/or sick leave or LWOP in combination with the maximum amounts of excused absence specified in 1. and 2. above.

D. In the event of major disruption in public transportation, employees who normally utilize the disrupted public transportation may, at the discretion of the manager, be granted excused late arrival.

Section 10. Leave Without Pay (LWOP)

A. Requests for LWOP will be given serious and bonafide consideration. Such requests will be approved workload considerations permitting.

B. LWOP will be granted in the following cases:

1. When a disabled veteran requests LWOP for medical treatment;
2. When requested by a reservist or National Guard member for military duties. Employees may request such leave after their military leave has been exhausted;
3. When requested by an employee who has suffered an incapacitating job-related injury or illness and is waiting adjudication of her/his claim for employee compensation by the Office of Workers' Compensation Program;
4. When an employee makes a request under the NMB Family and Medical Leave Program and meets the criteria for that program as contained in Section 6 of this Article;
5. When an NMB employee is elected to serve as AFGE LOCAL 1923 President;
6. An employee may take 24 hours LWOP per calendar year to attend parent teacher conferences, and for dental/medical appointments for family members.

C. Before requesting LWOP, employees should consult with their supervisor or the administrative office concerning the potential consequences of LWOP on tenure, WIGI's, retirement, health benefits, and other benefits.

Section 11. Military Leave

A. In accordance with law and regulations, full-time employees who are members of the National Guard or the Armed Forces Reserves are entitled to 15 calendar days of regular Military Leave (ML) in a fiscal year for active duty or active duty for training.

B. For part-time employees, ML is prorated based on the number of hours in the employee's workweek.

C. Employees who do not use the entire 15 days can carry any unused ML (not to exceed 15 days) over to the next fiscal year. Military leave may never exceed 30 days.

D. Regular ML is charged in increments of one (1) day and includes non-work days falling within the period of absence of military duty, e.g., weekends, holidays, day off due to compressed work schedules. Non-workdays falling at the beginning or end of ML are not included in the period of ML.

Section 12. Court Leave

A. In accordance with laws and regulations, an employee with a regular scheduled tour of duty is entitled to Court Leave (CL). CL is appropriate for:

1. jury duty;
2. when summoned to court to serve in an unofficial capacity as a witness for, or supply evidence for, State or local government; or
3. when summoned to court to serve in an unofficial capacity as a witness for, or to supply evidence for, a private party when the Federal, D.C., State or local government is either the plaintiff or the defendant.

B. CL is not to be granted to an employee who appears in court as either a plaintiff or a defendant on her/his own behalf. Employees should present the court order, subpoena, or summons to their approving official when they request CL for appearing as a witness or a juror.

C. Upon return to duty, the employee must submit written proof of attendance from the court to the leave approving official. The proof of attendance should show the dates (and hours if less than a full day) served.

D. No compensation is received for serving on jury duty in a Federal court; however, employees may keep expense money received for mileage, parking or required overnight stay. Monies received for performing jury duty in State or local courts are indicated on the pay voucher or check as either "fees for services rendered" or "expense money." "Expense money" may be retained by the employee. "Fees for services rendered" must be submitted to the Agency's administrative office.

Article 32—Fitness for Duty

Section 1. Ordering a Medical Examination

The Employer may order an employee to undergo a medical examination (medical or psychiatric) only under those conditions authorized in the prevailing regulations (5 C.F.R. 339.301-302).

Section 2. Offering a Medical Examination

Consistent with 5 C.F.R. 339.302, the Employer may offer a medical examination, including a psychiatric evaluation, when the Employer needs additional information to make an informed management decision. Reasons for offering a medical examination must be documented to the employee, and the offer of medical examination will be carried out and used in accordance with 29 C.F.R. 1613.706.

Section 3. Authority and Use of Medical Determinations

Authority to order and offer medical examinations, and guidelines for the use of medical examinations, will be drawn from and be consistent with 5 CFR 339.301- 305 and all other applicable laws and regulations.

Medical examinations will be ordered or offered only when either the employee indicates a medical need for accommodation or a change in work status, or the employer needs information to make sound management decisions regarding the employee's ability to perform assigned work. The employee will have the opportunity to have her or his physician provide medical information in addition to information provided by physicians chosen by the employer. When medical examinations are ordered or offered, the employer will pay for the examinations, except in situations specifically excluded by applicable law or regulation.

Section 4. Procedures

In all discussions regarding medical examinations with any management official, the employee shall be entitled to Union representation. Prior to any discussion, the employee shall be notified of this right, given an opportunity to contact and discuss the matter with his/her Union representative, and permitted the right of representation in such discussion. This will not preclude an employee from having another representative of his/her choosing.

During these procedures, the employee will be apprized of his/her rights under applicable law and regulation. Where supported by appropriate medical evidence and where it is practical for the employer, the employee may be given the opportunity for suitable interim adjustments in his/her work assignments.

When the results of the medical examination reveal that the employee:

- cannot satisfactorily perform useful and efficient service in his/her regularly assigned job;
- retains the capacity to do other work at the same grade or pay level within the work location or the commuting area; and
- otherwise meets the minimum qualifications for a vacant position that the Employer is seeking to fill;

the Employer will make reasonable efforts, consistent with the Agency's Reasonable Accommodation policy, to offer the employee a reassignment to this position. However, the Employer is not obligated to create or vacate a position for a disabled employee.

Section 5. Counseling

When the Employer determines that the medical evidence reveals that the employee is totally disabled for service in his/her current position and that reasonable accommodation for another position cannot be made, the Employer will so advise the employee and provide counseling regarding alternatives and available benefits.

When such a disabled employee has five (5) or more years of Federal service and would meet existing disability retirement requirements, the Employer will counsel him/her concerning disability retirement and explain the procedure for voluntarily applying for disability retirement. In the event that such an employee is unable or unwilling to file on his/her own behalf, the Employer may initiate an application for the employee in accordance with applicable law and regulation.

The Employer shall provide the employee proper notice, in accordance with regulation 831.1203(b), and shall permit the employee 30 days in which to respond in writing.

If the medical evidence and performance records establish that the employee retains the capacity to perform satisfactorily in a vacant lower grade position which the Employer seeks to fill within the employee's commuting area, the employee will be informed of his/her option to request such a demotion.

Section 6. Confidentiality of Records

All records pertaining to the employee's examination and, as applicable, any subsequent personal information included with an application for disability retirement are confidential and may be disclosed only to those with an administrative need to know or as specifically authorized by the subject employee in writing.

Article 33—Temporary, Probationary, Part-Time Permanent and Seasonal Employees

Section 1. General

All employees of the bargaining unit shall be covered by the terms of this Agreement to the extent consistent with CSRA and other applicable laws and regulations.

Section 2. Temporary Employees

Should the need arise to employ individuals at other than entry-level positions, the Union will be informed prior to the appointment.

The NMB will notify the Union of the proposed separation of temporary employees.

Temporary employees may be separated at any time upon notice in writing from

the NMB. When it is determined that a temporary employee is to be separated, the employee will normally be given two (2) weeks notice.

In cases of impending separation (for other than misconduct), the NMB will give consideration to placement of the probationary employee in positions commensurate with his/her demonstrated ability.

Section 3. Probationary Employees

The NMB agrees to provide probationary employees with the opportunity to develop and to demonstrate proficiency.

During the probationary period, the employees' conduct and performance in the actual duties of their positions may be observed, their pre-employment background investigated, and they may be separated from the service at the discretion of Management.

Probationary employees will be entitled to ongoing counseling about their conduct and performance through completion of their probationary period.

Probationary employees have the right to Union representation.

It is Management's intent that, when a probationary employee is to be separated, the employee will ordinarily be given two (2) weeks notice of termination, when practicable, or such lesser notice as the remaining probationary period permits.

Section 4. Part-Time Employees

If a full-time employee wishes to convert to part-time, he/she shall make a request to her/his supervisor. The NMB will give good faith consideration to the employee's request based on the employee's circumstances and the needs of the organization. The NMB is under no obligation to create part time positions to accommodate employee requests.

Employees who accept or convert to part-time positions have no guarantee that they will subsequently be converted to full-time employment, but the NMB agrees to consider the employee's request based on the employee's circumstances and the needs of the organization. Management will give first consideration, where workloads and staffing considerations permit, to increasing an incumbent to full-time before seeking an outside hire for the same position and location.

Upon the request of the employee, the NMB will advise the employee of the effects of change to part-time employment and, in case of change in grade, the salary of the part-time appointment.

Requests for changes to part-time and full-time employment can be made in writing and will be retained and considered for at least 90 days.

An employee who is denied a conversion from full-time to part-time or vice versa shall be notified in writing, upon request, of the reasons.

The NMB agrees to establish tours of duty for part-time permanent appointees, which are consistent with appropriate law, rules and regulations. Tours of duty for part-time employees will be established or changed by Standard Form 52. As a rule a full-time employee will not be required to accept part-time employment as a condition of continued employment, nor will the NMB, where operating conditions permit, abolish a full-time position occupied by an employee in order to make that position available on a part-time basis.

Management will give consideration to an employee's request for temporary adjustment of a part-time work schedule because of personal hardship or to permit participation in management approved details, other assignments or training, if operating conditions permit.

Section 5. Job Sharing/Splitting

A. Purpose

Job sharing/job splitting provides employees with considerable work scheduling flexibility beyond normal part-time work. It is expected to open opportunities for increased part-time work and provide humanitarian assistance to employees with special spousal care, childcare, elder care, or other special needs. Job sharing/job splitting is limited to two employees in a team. The job sharers are expected to seek management assistance and approval in drawing up the job share plan so that the work will be properly divided. The NMB is under no obligation to approve or create job share or job split positions.

In the application of this article, all part-time employees shall be treated fairly and equitably in all aspects of personnel management consistent with law, government-wide rule or regulation, and this Agreement.

B. Definitions

Job sharing is a form of part-time employment in which the tours of duty of two employees are arranged in such a way as to cover a single full-time position. Job sharing will be considered only if traditional part-time employment is not practical or feasible. Job splitting is a form of job sharing where the duties and functions of one full-time position are split to create two new positions, each staffed by a part-time employee. Job splitting will be considered only if traditional part-time employment and job sharing is not practical or feasible. Job shares or job splits will be created only if, in the judgment of the Agency, the NMB's mission delivery will not be adversely affected.

C. Status

Although they share the duties of a full-time position, job sharers are considered to be individual part-time employees for purposes of appointment, tour of duty, pay, classification, leave, holidays, benefits, position change, service credit, record keeping, reduction in force, adverse actions, grievances and personnel ceiling.

D. Tour of Duty

Each job sharing employee to the maximum extent feasible shall be informed of his/her regularly scheduled work hours, as agreed to by the Employer, employee and the other job sharer. Management will make every reasonable effort to avoid scheduling additional hours not contiguous with the established tour of duty. If Management schedules non-contiguous hours, it will provide an explanation in writing justifying the need to work non-consecutive hours. The Employer agrees that the statutory, regulatory and contractual provisions shall apply in any situation in which overtime may be worked.

A variety of different work scheduling arrangements can be used, for example, split days (one job sharer works mornings and the other afternoons), alternate days (one job sharer works Monday and the other Tuesday, etc.) or split weeks (one job sharer works from Monday morning through Noon Wednesday and the other works Noon Wednesday through Friday). Job sharers may also work alternate weeks so long as each job sharer works no more than 32 hours a week and has at least one (1) hour of work regularly scheduled in each of the two (2) weeks of the biweekly pay period. The latter is necessary in order to meet the legal definition of regularly scheduled work which permit an employee to earn leave. The work schedules of job sharers may overlap (one job sharer may work from 10 a.m. to 2 p.m. every day and the other from Noon to 4 p.m.). This arrangement can provide agencies with extra coverage during heavy workload periods. A certain amount of overlap may also be desirable to enable job sharers to attend staff meetings or familiarize each other with work developments. Although most job sharers split the hours of a full-time position in half, this is not an absolute requirement. For example, one job sharer could work 24 hours each week and the other 16. In an AWS office, one (1) member could work five (5) days a week from 7 a.m. to 1 p.m. and the other member from 12 Noon to 6 p.m., five days a week.

E. Job Classification

Job sharers will share identical position descriptions since they are sharing one full-time position. Job splitters may have different position descriptions. Job splitting will not be used to reduce the grade(s) of any current positions.

F. Leave

Earning leave and changes to accrued leave shall be in accordance with applicable OPM leave regulations.

G. Holidays

If a holiday falls on a day a part-time employee is scheduled to work and the employee does not work, the employee is paid as specified by applicable law and regulation.

H. Health Insurance

A part-time employee is eligible to participate in the Federal Employees Health Benefits program as specified by applicable law or regulation.

I. Position Change

A part-time employee is covered by an NMB merit promotion program and should be reassigned, detailed or promoted in accordance with such programs in the same way and under the same circumstances as other career or career-conditional employees. Movement from a part-time to a full-time position at the same grade level is not subject to competition unless the position to which the employee is moved has a greater promotion potential.

J. Adverse Actions/Grievances

A part-time employee has the same protection as a full-time employee in the event of adverse actions such as suspensions, removals, furloughs and reduction in grade or pay.

K. Reduction in Force (RIF) In a RIF, part-time employees are placed in a separate competitive level from comparable full-time employees. When released from competitive level, a part-time employee can compete only for other part-time jobs. Similarly a full-time employee has assignment rights only to a full-time position and cannot displace a part-time employee.

L. Merit Promotion

A job sharing team may apply for a full-time position under NMB merit promotion programs but the qualifications of each job sharer should be evaluated individually. If both job sharers are among the best qualified, they should be referred as a team to the selecting official. A job sharer may also apply individually for promotion to a part-time or full-time position. In the latter case, the job sharer would have to agree to a full-time work schedule if selected for the position.

M. Pay and Classification

Principles and procedures apply equally to full-time and part-time positions. The grade level of a position is determined by the level of difficulty of work, the degree of supervision, and the qualifications required. An employee's work schedule shall have no effect on the proper classification of a position.

N. Other Provisions

If an employee is engaged in part-time work and the NMB deems that it is necessary to convert the individual to full-time work, to the maximum extent feasible, it shall give the employee at least two (2) weeks notice prior to the start of the effected administrative work week. The employee will be given an opportunity to explain how such action may cause undue hardship. The NMB, on presentation of a reasonable explanation showing the undue hardship, will then make every reasonable attempt to alleviate the situation and to find other ways to accomplish the work. The NMB will afford the employee a written explanation of the reason for change to a full-time position for any period of time exceeding two (2) full pay periods.

Additional hours will not be assigned to employees engaged in job sharing for the purpose of eliminating the need to schedule qualified, full-time employees for overtime. Overtime hours will be assigned and accomplished according to guidelines established in this Article.

The employment of an individual in a part-time position or a seasonal position shall not be a basis for exclusion from participation in a job sharing/job splitting program.

No employee shall be barred from job sharing on the basis of age, race, marital status or other relationship, Union activity, gender, religion, or any other non-merit factor.

In the event that one of the employees participating in a job sharing arrangement leaves job sharing for any reason, it is the responsibility of the employee to locate a new job-sharing partner who has civil service status and who is acceptable to the Agency.

Employees currently employed in a part-time position and covered by the same position description may request the opportunity to enter into a job sharing arrangement consistent with the terms of this Article.

The Employer agrees that the entry into job sharing is a strictly voluntary action initiated by the employee's express request and without any form of coercion by the Employer. The Employer agrees to make known to all employees, when applicable, the availability of part-time employment, including job sharing and job splitting and to assist any interested employee in setting up a job sharing/job splitting arrangement.

Each employee entering into a job sharing/job splitting arrangement shall be given a written explanation of his/her rights, benefits, and work schedule. The job sharing/job-splitting plan is to be signed and dated by the Employer and the employees. The job sharing/job splitting agreement shall incorporate the understanding that in the event that one of the job sharing/job splitting parties leaves, Management will give them a reasonable amount of time to find another partner if Management concludes that the needs of the position requires full-time staffing. It is understood that during that period, the employee may be required to increase his/her tour of duty depending upon the needs of the organization and the terms of their job sharing/job splitting agreement. Changes to any approved job sharing arrangement will require the establishment of a new job sharing plan consistent with this Article.

If job splitting is implemented, any changes in employees' working conditions not otherwise covered by this Article will be handled in accordance with the this Agreement and 5 U.S.C. 71. Employees who enter into job sharing have no guarantee that they will subsequently be converted to full-time or regular part-time employment, but the NMB agrees to consider the employee's request based on the employee's circumstances and the needs of the organization. An employee who is denied conversion when an opportunity has been announced shall be notified in

writing of the reasons, upon request.

If the NMB determines that a position cannot be job shared, it will so notify the Union in writing of its reasons as soon as possible.

The Union agrees that members of the job sharing/job splitting team will share adequate work space. Management will make reasonable efforts to provide in-office security to protect employee's personal belongings. It is understood that job sharing/job splitting is not intended to require employees to perform job duties when they are not in duty status. Therefore, every effort will be made to minimize the need for communications with employees while not on duty.

Leave requests by employees in a job sharing situation shall be approved or denied in accordance with Article 31. Leave will not be denied solely on the basis of participation in a job share situation.

Where an employee requests to work part-time and job sharing/job splitting is being considered, NMB will grant reasonable amounts of duty time for employees to speak with/to each other about the possibility of job sharing/job splitting, drafting and revising their proposals, completing the surveys, discussions with Management and the Union about job sharing/job splitting and their proposals.

The NMB will give bona-fide consideration to employees requesting reassignment from a non-job sharing position to a job sharing position and from a job sharing position to another job sharing position. An employee whose request is denied shall be notified of the reasons in writing upon request.

Awards for employees who job share or hold a part-time position will be consistent with Article 17 of this Agreement.

When Management meets with potential job sharing participants, the Union will be provided notice and an opportunity to be present. Potential job sharing/job splitting participants shall submit a written proposal to their immediate supervisor. Potential participants will receive a written response from Management within a reasonable amount of time (normally within 10 workdays) of submitting their written proposal informing them of acceptance or rejection of their job sharing/job splitting proposal. If rejected, the reasons will be stated. The participants may revise their written proposal to accommodate the reasons given for rejection and resubmit it for another decision.

The NMB will give good faith consideration to the employees' initial requests and requests for continuing participation in job sharing/job splitting based on employee circumstances and needs of the organization.

Performance appraisals for the part-time employees, including job sharing/job splitting, will be handled in accordance with the Agreement. Throughout the tenure in a part-time position, the employee's appraisal will not reflect the performance of the job share partner.

Job sharing/splitting will not be used for the purpose of reducing FTE's.

The Union and Management both acknowledge that due to the size of the Agency

and the bargaining unit, opportunities for job sharing and job splitting will be extremely limited.

Article 34—Office of Worker’s Compensation Program (OWCP)

Section 1. Counseling

The Employer agrees that when an employee suffers a job-related illness or injury in the performance of duties and reports it to his or her supervisor, the supervisor and/or the administrative office will provide the following:

- his/her right to file for compensation benefits;
- the types of benefits available;
- the procedure for filing claims;
- the option to use compensation benefits in lieu of sick or annual leave; and
- whether Continuation of Pay (COP) is applicable.

The supervisor will notify the Local Union steward when he or she becomes aware that a bargaining unit employee has filed an OWCP claim.

An employee who has filed for compensation benefits will be counseled, upon request, concerning such options as may be available to the employee at that point.

Section 2. Employee Options

An employee with a job-related injury/illness (including conditions aggravated by job-related factors) may elect to be placed on sick or annual leave instead of leave without pay, pending approval or disapproval of his/her compensation claim. Employees shall have the option of buying back the leave used and having it reinstated to their account if their claim for compensation is approved.

An employee with a job-related traumatic injury may claim up to 45 days of continuation of pay (COP). The entitlement to COP is not available to employees who file an occupational disease claim.

Section 3. Placement of OWCP Claimants

Where the employee requests and supports his/her request with appropriate medical information, the Employer will make a serious effort to assign the employee on a temporary basis to duties consistent with the employee's medical needs, pending resolution of his/her claim.

Where the employee requests and supports his/her request with an approved OWCP claim and appropriate medical information, the Employer will make a serious

effort to assign the employee to duties consistent with the employee's medical needs. Any such action will be consistent with the negotiated merit promotion article (Article 26).

When an employee who has been determined by OWCP to be disabled has recovered sufficiently that he or she is required or permitted to seek re-employment, Management will make a serious effort to offer appropriate employment.

Section 4.

Information on how to file for Worker's Compensation and the appropriate forms will be made available upon request.

Article 35—Employee Assistance and Counseling

Section 1. Policy Statement

The NMB and the Union jointly recognize that treatable illnesses and disorders occur in the work force for reasons including alcohol, drug and dangerous substance abuse. The Parties further recognize that whenever such conditions adversely impact on an employee's work performance, attendance, reliability or conduct, the employee should constructively address these problems through participation in counseling and treatment where appropriate.

Therefore, the Employer and the Union will work together to encourage troubled employees whose work performances are adversely affected to pursue counseling help or treatment. The Employer and the Union both recognize that failure to seek or respond to counseling or treatment may result in corrective action by Management if the employee's work performance continues to be adversely affected.

Section 2. Referrals

The NMB agrees to assist employees in securing counseling services when work performance, attendance, reliability or conduct are adversely affected as a result of factors including alcohol, drug or dangerous substance abuse.

At the NMB, this is normally accomplished through referral to and cooperation with the Agency's contracted Employee Assistance Program (EAP) provider. The EAP provider will work with the employee to identify programs and treatment, including programs and treatment covered under the employee's insurance plan. In the absence of an EAP contractor, the Agency will seek other resources to assist the employee as appropriate.

Section 3. Voluntary Participation and Employee Responsibility

Although the existence and functions of counseling and referral programs will be publicized to employees, no employee will be required to participate in a counseling program offered under this Article. Should any counseling appointment under this

Article require an absence from duty, such absence will be considered to be on official duty unless he or she chooses to schedule the counseling outside of duty hours. For ongoing or extensive treatment agreed to by the employer, the employee must get sick leave approval or make other appropriate arrangements with his/her supervisor.

Section 4. Confidentiality/Relationship to Disciplinary and Adverse Action

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

Without an employee's specific written consent, the supervisor may not obtain information about the substance of the employee's involvement with a counseling program. If voluntary participation in a counseling program or treatment program is part of a negotiated resolution to a discipline or performance problem, participation in the program may be considered in an evaluation of the employee's performance consistent with the negotiated resolution.

If, as a result of a proposed disciplinary or adverse action, an employee notifies Management for the first time that he/she has a substance abuse problem that significantly contributed to the misconduct and is seeking the services of EAP, Management will normally negotiate referral to a counseling or treatment program with the employee. Upon confirmation or diagnosis of the substance abuse problem, Management will normally put the proposed disciplinary action in abeyance for a period of not more than one (1) year while the employee undergoes treatment under terms and conditions agreed to. This provision only applies in the first instance of substance abuse and does not apply if severe, egregious, or criminal misconduct is involved.

If at the end of such period there are no further instances of related misconduct, the proposed discipline will be dropped or the incident will be resolved according to the negotiated resolution above. Violation of any agreed to conditions, or continued misconduct as referenced in the proposed disciplinary or adverse action during the abeyance period will result in activation of the proposed disciplinary or adverse action process. Requests for counseling or referral assistance will not be a factor in job security or promotional opportunities.

Section 5. Access to Services

Employees are on official duty when they meet with the EAP provided they inform their supervisors of their appointment with the EAP counselor. Employees who do not want their supervisors to know of their attendance must arrange appointments outside duty hours or request leave approval.

However, no current agreements or practices regarding excused absences for either counseling services or counseling referrals will be diminished by this Article.