



**Negotiated Agreement
Between
Naval Facilities Engineering Service Center
and
Federal Union of Scientists and Engineers
Local R12-196
18 JULY 1997**



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This Agreement is made by and between the Naval Facilities Engineering Service Center (NFESC), Port Hueneme, California, hereinafter referred to as the Employer, and the Federal Union of Scientists and Engineers (FUSE), Local R12-196, referred to as the Union or the Labor Organization collectively referred to as the Parties.

PREAMBLE

In accordance with the provisions of the Civil Service Reform Act of 1978, hereinafter referred to as The Act, Executive Order No. 12871 of 1993, and in consideration of the mutual covenants herein set forth, the Parties hereto intending to be bound, hereby agree as follows:

WHEREAS, it is the intent of both Parties to promote, preserve and improve the efficient administration of the Federal Service and the well-being of the professional employees within the meaning of the Act. The intent of the agreement between the Parties is, therefore, to promote improved performance and efficiency through Partnership by setting forth those areas of mutual agreement concerning personnel policies, practices, and matters affecting working conditions and establishing a fair procedure for the resolution of differences at the Naval Facilities Engineering Service Center (NFESC), Port Hueneme, California.

The Parties hereto agree as follows:

ARTICLE 1. RECOGNITION AND UNIT DESIGNATION

Section 1. Recognition

The Union is the exclusive representative of all the professional employees within the unit defined in Section 2, below. The Union recognizes its responsibility to represent the interest of all unit employees regardless of their organizational affiliations and membership with respect to grievances, personnel policies, practices, procedures, or other matters affecting working conditions.

Section 2. FUSE

a. The FUSE Local R12-196 unit covered by this Agreement is composed of all professional employees of the Naval Facilities Engineering Service Center. Excluded from this unit are all non-professional employees, employees engaged in federal personnel work in other than a purely clerical capacity, management officials and supervisors as defined in the Act.

b. Management will provide annually a complete listing of Bargaining Unit Members (Name, Code, and Work Location) and will provide quarterly updates reflecting any changes to this information throughout the year.

Section 3. In-Processing

The Employer will provide each new FUSE bargaining unit member covered under this Agreement with a copy of the bargaining unit agreement during in-processing. The Union will provide a memorandum of introduction including the names, phone numbers, and addresses of Union Officials to be included with this Agreement. The Employer will inform the Union president by electronic-mail of all new employees (including: name, code, hire date, working location [address], and other special information) who are covered by this agreement when they report onboard. The Union will be given the opportunity to participate in periodic new employee orientations conducted by the Employer for the purpose of disseminating general information on the role of Union, i.e., grievance procedures (excluded is any information relating to internal Union business such as solicitation of membership).

ARTICLE 2. EMPLOYER-UNION RELATIONS

Section 1. Bi-lateralism

a. This Agreement has been made in the spirit of problem resolution and reflects bi-lateralism in labor relations. It is the intent of the Parties that labor management conflicts arising during the life of this Agreement be resolved promptly and equitably through the procedures of Article 6, Section 4 of this Agreement and/or the Labor Management Council, if problems are not resolved informally.

b. Whenever language in this Agreement refers to specific duties or responsibilities of specific employees or management officials, it is intended only to provide a guide as to how a situation may be handled. It is agreed that the Employer retains the sole discretion to assign work and to determine who will perform the function discussed.

Section 2. Productivity Improvement

The Employer and the Union reaffirm their commitment to continuously promote productivity improvement through the application of the principles of Total Quality Leadership (TQL) throughout the Center. The Parties agree to pursue the elimination of fraud, waste and abuse as well as the identification of alcohol and drug abuse problems and other impediments to efficient operations in order to enhance employee safety and working conditions, and to improve productivity and service to our customers.

Section 3. Matters Appropriate for Discussions and Negotiations

a. The Employer agrees prior to implementation to negotiate with the Union on impact and implementation of personnel policies, practices or matters affecting working conditions as allowed by Title VII of the Act, Executive Order 12781, and this Agreement. The Union reserves the right to bargain over changes in working conditions on any subject mentioned in the

contract to the extent allowed by law. Matters excluded from negotiations are defined in Article 8 of this Agreement.

b. Prior to implementing or making changes in personnel policies, practices or matters affecting working conditions of employees in the unit, the Employer will provide the Union a copy of the proposed new policy or change for review and comment, or advise the Union if no written document will be used. The Union will have five work days from the date of delivery of the proposal to the Union president or vice-president to request negotiations. If within five workdays the Union has not requested negotiation or has indicated negotiation will not be requested, the Employer may implement the new policy or change.

c. Should a dispute between the Parties occur over the negotiability of a matter, the Parties will request a determination be made in accordance with the Act.

Section 4. Unfair Labor Practice

a. Unfair Labor Practice complaints by the Parties may be filed or received only by the President or, in the absence of the President, the Vice President for the Union and the Commanding Officer for the Employer. A copy of any Unfair Labor Practice complaint filed by the Union will be provided to the Resource Management Division.

b. In the spirit of resolving disputes at the lowest possible level, the Parties agree to provide informal notification to the other party of an intent to file an unfair labor practice charge. The Parties agree to make bona fide attempts to resolve any unfair labor practice issues to alleviate the need to file the charge.

Section 5. Morale

The Parties acknowledge that it is of mutual concern and benefit to maintain and promote high morale and professionalism within the workforce. Among the means of influencing these factors is the utilization of employees to their highest potential within the limits of assignments available and other workload considerations.

ARTICLE 3. PRECEDENCE

Section 1. Precedence

In the administration of all matters covered by this Agreement, the Parties are governed by: existing or future laws, including appellate decisions related thereto; published regulations of appropriate authorities; and future regulations as appropriate, not in conflict with this Agreement. The contract agreement will take precedence over previous NFESC policies, procedures, and instructions. This section is not to limit the Union's rights (compelling need) under 5 USC 7117 (a) (2).

Section 2. Validity

Any provisions of this Agreement found to be invalid by a court or other appropriate authority may be considered void following consultation by the Parties. All other provisions will be in effect for the duration of this Agreement.

ARTICLE 4. DUES DEDUCTION

Section 1. Agreement

The Employer agrees to deduct Union dues from the pay of those employees who authorize the deduction in writing in accordance with the provisions of this article.

Section 2. Start-up

Dues will be deducted by the Employer beginning the next complete pay period following receipt of an employee's completed Standard Form 1187 authorization certified by one of the Union Officers.

Section 3. Allotment Forms

The Union will purchase allotment forms (Standard Form 1187) and provide these to employees, certify the amount of dues; inform employees of the allotment program, the volunteer nature and conditions of revocation; and forward the completed forms to the Human Resources Office (Code 234).

Section 4. Dues Checks

The Employer will forward to the Comptroller, Fiscal Office, Federal Union of Scientists and Engineers, 159 Burgin Parkway, Quincy, MA 02169, within three workdays after each payday:

- a. Duplicate alphabetical listing of the name and payroll number and the amount deducted for each employee on voluntary allotment. A Copy of the listing will also be provided to FUSE Local R12-196. No additional listings other than one for the Employer's Comptroller will be provided.
- b. Checks drawn on the Treasury of the United States and made payable to the Comptroller, Fiscal Office, Federal Union of Scientists and Engineers, in an amount equal to the total of the allotments deducted.

Section 5. Adjustments

The Union will notify the Employer of any error which it believes has been made in the amount of dues previously transmitted. Upon verification of an error reported by the Union or discovered by the Employer, the Employer will make an appropriate adjustment in the amount

transmitted within two pay periods after receipt of the notice of error by Payroll Office, Code 2421. An explanation of the adjustment will accompany the check in which it is reflected.

Section 6. Dues Termination

An allotment will be terminated when an employee leaves the unit (except for temporary promotion or detail); or when the employee has been expelled from the labor organization. The Union will notify the Human Resources Office in writing after a member, who has authorized dues withholding, is expelled from the Union.

Section 7. Dues Revocation

Employees may revoke their voluntary authorization of allotment for payment of Union dues by completing Standard Form 1188 and submitting it to the Human Resources Office, NCBC. Revocations submitted during the first year after the initial authorization for allotment, will become effective the first pay period following the one (1) year anniversary date of the initial authorization. Revocations submitted more than one (1) year after the initial authorization for allotment will become effective the first pay period following the 1st of March. Standard Form 1188 may be obtained by calling the Human Resources Office, Employee Relations Division, Code 234. The Human Resources Office will provide the Union a copy of the processed Standard Form 1188.

Section 8. Dues Payment

Nothing in the Agreement will require an employee to become or to remain a member of the labor organization; or to pay money to the organization unless the employee voluntarily submits a written authorization (SF 1187) certified by one of the Union officers for the payment of dues through payroll deductions.

ARTICLE 5. REPRESENTATION

Section 1. Union/Management Meetings

The Parties designated representatives may meet on matters of immediate concern by mutual agreement in an informal effort to achieve resolution of differences on matters not subject to the Settlement Procedures, Article 6. Upon request of either Party, a meeting will be held between the Commanding Officer and the President of the Union on these matters not subject to the settlement procedure that have not or cannot be resolved at a lower level. The requesting Party will give sufficient advance notice on topics of discussion prior to the meeting. Upon completion of the meeting, minutes of the meeting and disposition on topics discussed will be prepared by the Employer and agreed to and signed by both Parties.

Section 2. Representatives

The Employer agrees to recognize up to four (4) designated Union officers. In order that the Union may better represent employees of the unit, the Union may appoint four (4) other representatives at NFESC West and one (1) representative at NFESC East. The Union will maintain a current list of all elected officers and authorized representatives with the Employer.

Section 3. Official Time

a. The Parties agree the Union Representatives will be permitted a reasonable amount of official time to meet with the Employer and employees concerning employee complaints, working condition issues or grievances. Solicitations of membership, collection of dues, campaigning for Union office, activities concerned with internal Union business, or other matters prohibited by law or regulation will not be conducted on official time or during working hours of the employees involved.

b. Official time limited to eighteen (18) hours annually will be granted each Union officer to attend Labor Management related training of mutual interest to both Parties and the Government's interest will be served by the employee's attendance. Advance notice is required and approval must be obtained from the employee's supervisor.

Section 4. Formal Discussions

The Union will be given the opportunity to be represented at formal discussions between the Employer and employees concerning grievances, personnel policies, contested performance rating reviews (if requested by a bargaining unit member) or practice, or other general conditions of employment.

Section 5. Complaints and Grievances

The Union agrees that representatives and Union Officers will not solicit either complaints or grievances from employees. The Employer will not discourage complaints or grievances.

Section 6. Representational Time

a. Union officers and representatives will be authorized reasonable time during duty hours without loss of pay or benefits of any kind to engage in activities as allowed by Title VII of the Act. There will be no restraint, interference, coercion or discrimination against Union officers or representatives because of the performance of these duties.

b. The Union agrees to guard against use of excessive time by Union representatives for the conduct of their representational functions. Timecards will be annotated with the appropriate overhead job order numbers by Union representatives engaged in representational functions. Union representatives will inform their supervisor or acting supervisor when conducting their representational functions. Union officials and their supervisors will agree upon reasonable means of communicating notice to the supervisors.

Section 7. National Representatives

The Employer agrees that visits by FUSE National Representatives, National Association of Government Employees (NAGE) and Local West Coast NAGE representatives will be permitted subject to security regulations. The Union agrees to notify the Employer in advance of the intended visit and the purpose thereof.

ARTICLE 6. SETTLEMENT PROCEDURES

Section 1. Intent

It is the intent of the Parties that differences can be resolved promptly, equitably, and whenever possible, informally. Most complaints arise from misunderstandings or disputes which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level. Since the prompt settlement of complaints is desirable in the interest of sound labor-management relations, informal verbal discussion of complaints between employees and their immediate supervisor is not only encouraged but required prior to initiating an employee grievance under the negotiated settlement procedures. The settlement of the complaint at this level will be considered a non-precedent setting resolution. A Union representative may attend such meetings if requested by the employee.

Section 2. Grievance Representation

This article is the only procedure available for the settlement of complaints and grievances by employees or the Parties except as required by law and/or limited by the specific exclusions listed in Section 3 of this article. Complaints and grievances may be presented and processed by:

- a. an employee on his or her own behalf, in which case the Union will have the right to be present during any settlement proceedings;
- b. an employee represented by other than a Union representative, only if approved by the Union, and the Union will have the right to be present during settlement proceedings;
- c. an employee represented by the Union;
- d. the Union on behalf of an employee;
- e. the Union on its own behalf; or
- f. the Employer.

Section 3. Exclusions

Grievances by employees and the Union must be over matters which are within the control of the Employer. Grievances on the following areas are excluded from the settlement procedure and arbitration process of this agreement:

- a. Claimed violations of 5 USC, Chapter 73, Subchapter III, relating to prohibited political activities;
- b. Retirement, life insurance, or health insurance;
- c. A suspension or removal under 5 USC 7532, relating to National Security;
- d. Any examination, certification, or appointment;
- e. The classification of any position which does not result in the reduction in grade or pay of an employee; and
- f. Matters covered by 5 USC 2302 (b)(1), prohibited personnel practices, such as EEO discrimination complaints.
- g. Letters of caution and admonishment;
- h. Adoption or non-adoption of a beneficial suggestion;
- i. Termination of a: (1) Temporary Employee, (2) Probationary Employee, (3) Temporary Position or (4) Temporary or Exempt Appointment,
- j. Reduction in Force (RIF)

Section 4. Employee Grievance Procedure (See Grievance Procedure Flowchart, Section 5, Page 13)

Employee Grievances (Section 2.a., 2.b., or 2.c. above) will be processed in accordance with the following procedure. The number of work days to process each grievance step is nominal and may be extended by agreement of the Parties or for periods of leave and official travel.

a. First Level (Includes items 1 through 5 of the Grievance Flowchart, Section 5, Page 13). An employee will have 10 work days to present the grievance to either the Union or the employee's immediate supervisor using the Grievance Resolution Form, Appendix A, after the employee becomes aware of the grievable situation. ***NOTE: Failure of the employee to file a completed, signed Grievance Resolution Form, Appendix A, will be cause for either the Union or management to reject the grievance.*** When the Union is asked to represent the employee, the Union will have 15 work days to informally resolve the complaint or forward the grievance form. When the grievance is presented to the immediate supervisor, the supervisor will have 10 days to attempt to resolve the complaint and issue a written decision. [When the immediate supervisor is a branch head, the division director may be involved in resolving the complaint.]

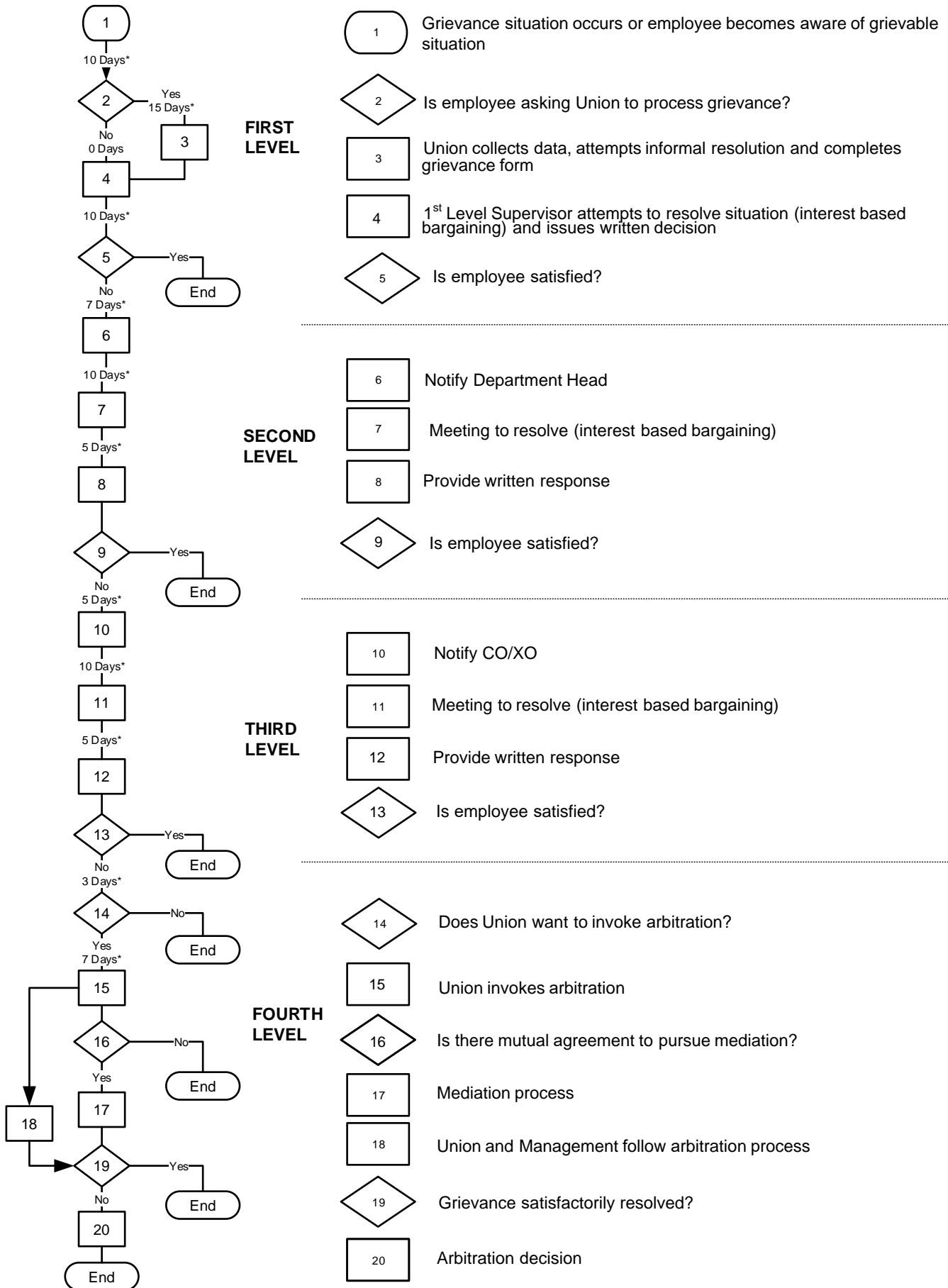
b. Second Level (Includes items 6 through 9 of the Grievance Flowchart, Section 5, Page 13). If the employee is dissatisfied with the First Level response, the employee will have 7 work days to notify the department head in writing. The department head will have 10 work days to review the issue (s) and to meet with the employee to resolve the grievance using the Interest

Based Bargaining process. The department head will have 5 additional work days to provide a written response.

c. Third Level (Includes items 10 through 13 of the Grievance Flowchart, Section 5, Page 13). If the employee is dissatisfied with the Second Level response, the employee will have 5 work days to notify the Commanding Officer/Executive Officer in writing. The Commanding Officer/Executive Officer will have 10 work days to review the issue(s) and to meet with the employee to resolve the grievance using the Interest Based Bargaining process. The Commanding Officer/Executive Officer will have 5 additional work days to provide a written response.

d. Fourth Level (Includes items 14 through 20 of the Grievance Flowchart, Section 5, Page 13). If the employee is dissatisfied with the Third Level response and the Union chooses to invoke arbitration, the Union will have 10 work days to invoke arbitration. The Parties will then prepare and submit the appropriate arbitration paper work. During the waiting periods, the Parties will pursue mediation if there is mutual agreement. If mediation is pursued and fails to resolve the issue, the Parties will continue to follow the arbitration process and comply with the arbitration decision.

Section 5. Grievance Procedure Flowchart



*Number of Working Days Will Be Extended Day for Day for Periods of Leave and TDY

Section 6. Submission Exception

A grievant who is an immediate subordinate of a First or Second Level deciding official will submit the grievance directly to that official for decision under the provisions of that Level of the grievance procedure.

Section 7. Disciplinary Actions

A grievance concerning disciplinary action will be initially submitted at the Level which is equivalent to the next supervisory level above the supervisor who took the action.

Section 8. Interpretation/Application Grievances

Issues (Section 2d, 2e and 2f) over interpretation or application of this agreement, any law, rule, or regulation affecting conditions of employment, not concerning the employment of any employee, can be referred to the Partnership Council for resolution before using the following procedure.

Step A. When either Party raises a concern over a matter cited above, the Parties' designated representatives will meet and attempt to resolve the disagreement informally.

Step B. If the grievance cannot be resolved in Step A, the moving Party may file a request for the other Party's official position in the dispute. The request will be in writing, will state the issue(s) in dispute, and will state the position of the moving Party. The responding Party will have ten (10) workdays from receipt of the request to provide their official position, in writing, to the moving Party.

Step C. If the written response does not resolve the dispute, the moving Party will invoke FMCS mediation.

Step D. If there is no settlement through mediation, the moving Party may invoke arbitration.

Section 9. Fact-Finding

Meetings held under this procedure are not an adversary process; they are fact-finding discussions conducted in an attempt to reach an adjustment. Written affidavits may be included with the grievance and/or with the request for review.

Section 10. Time Limit Extension

The time limits cited in this article may be extended by mutual written agreement of the Parties. If a time limit is not observed by the aggrieved, the grievance will be considered settled. The Parties may mutually agree in writing to waive any Step in this procedure. Failure on the part of the Employer to meet any time limits will permit the grievance to proceed to the next step.

ARTICLE 7. ARBITRATION

Section 1. Notification

Only those grievances processed through the negotiated Settlement Procedures, Article 6, may be submitted to arbitration. Within ten (10) workdays following receipt of the Section 4, Third Level or Section 8, Step D decision under the Article 6, Settlement Procedures, the moving Party will notify the other in writing that arbitration is requested and of the specific reasons for the request. Disputes concerning arbitrability will be resolved by an arbitrator selected in accordance with Section 2 of this Article.

Section 2. Arbitrator Selection

As soon as possible, after the arbitration request, the Employer will meet with the Union to jointly select an arbitrator. If an agreement cannot be reached, either Party may request the Federal Mediation and Conciliation Service to submit a list of seven (7) arbitrators. The Parties will meet within five (5) workdays after receiving the list. If the Parties cannot jointly agree to select one of the listed arbitrators, the Union and then the Employer will each strike one arbitrator's name from the list and will then repeat this procedure. The remaining person will be the arbitrator.

Section 3. Submissions

As soon as possible, after the receipt of the request for arbitration, the Parties will meet to define the issues and to prepare a joint submission to the arbitrator. If the Parties cannot agree on a joint submission, each will submit a separate written statement of the issue(s) to the arbitrator with a copy to the other Party. When there are separate submissions, then, and only then, may the arbitrator determine the issue(s) to be heard; otherwise, the arbitrator is bound by the joint submission statement.

Section 4. Jurisdiction

The arbitrator will have jurisdiction to interpret this Agreement and to apply it to the particular case under consideration, but will have no authority to change, modify, alter, delete, or add to the terms of this Agreement as such is the right of the Parties only.

Section 5. Cost

The fee and expenses of the arbitrator and costs for a transcript, if any, will be borne equally by the Parties. Arbitration hearing(s) will be held, whenever practicable, on the Employer's premises and during normal working hours. The Union representative, if an employee, or any employee called as a witness will be excused from duty without loss of pay or charge to leave to the extent necessary to participate in the official proceedings. Since official proceedings will be held only during normal work hours, overtime or compensatory time will not be paid to employees involved in the proceedings.

Section 6. Binding Decision

The decision of the arbitrator will be final and binding. Either Party may file exceptions to the arbitrator's award with the Federal Labor Relations Authority in accordance with its regulations.

ARTICLE 8. MANAGEMENT PREROGATIVES

Section 1. Employer Rights

a. All Employer rights, functions, and prerogatives are retained by and will remain exclusively vested in the Employer, except as specifically limited by this Agreement and United States statutes.

b. The provisions of Section 1a. above include, but are not limited to, authority to determine the mission, budget, organization, number of employees, and internal security practices of the Employer; and in accordance with applicable laws: to hire, assign, direct, layoff, and retain employees, to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees; to assign work, to make determinations with respect to contracting out, and to determine the personnel by which activity operations will be conducted; and with respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion, or from any other appropriate source; and to take whatever actions may be necessary to carry out the activity mission during emergencies.

Section 2. Negotiation Limits

a. The Employer has an obligation to bargain per Appendix B or future revisions.

b. Nothing in this section will preclude the Employer and the Union from negotiating procedures the Employer will observe in exercising any authority under this section, or appropriate arrangements for employees adversely affected by the exercise of any authority under this section.

Section 3. Application

The provisions of this Article will apply to all supplemental, implementing, subsidiary, or informal agreements between the Parties.

ARTICLE 9. EQUAL EMPLOYMENT OPPORTUNITY

Section 1. Mutual Commitment

The Employer and the Unions reaffirm their commitment to the principles of Equal Employment Opportunity.

ARTICLE 10. PERSONNEL ACTIONS

Section 1. Staffing

The Employer reserves the right to fill any position temporarily or permanently, by any means consistent with appropriate OPM and Navy regulations and guidance.

a. A temporary promotion is an exception to the merit promotion procedures by which a qualified employee may be assigned to perform higher level duties, both supervisory and nonsupervisory, for a specific period of time. A qualified unit employee who is temporarily assigned or detailed to any higher graded position on a non-competitive basis for more than ten (10) consecutive working days will be temporarily promoted to that position. The employee will receive pay retroactive to the start of the first day assigned or detailed. Temporary promotions will be made from among qualified employees. Union officials temporarily promoted to supervisory positions will take a leave of absence from their Union responsibilities for the duration of the temporary promotion.

b. When employees wish to document periods of detail and/or temporary promotion, they may do so by using Form SF-172 available from the Resource Management Division. The completed form should be returned to the Resource Management Division for forwarding to the Human Resources Office for inclusion in the employee's Official Personnel File.

c. Appropriate OPM and Navy regulations will be observed by the Employer in effecting temporary promotions.

d. The Employer may promote an employee whose position is upgraded because of accretion of duties without using competitive procedures as an exception to its merit promotion program. The Union will be advised of requests for such promotions of its members and provided an opportunity to comment upon these requests. The Human Resources Office and the Resource Management Division (Code ESC091) will ensure that the Union has been notified prior to processing an accretion of duties personnel action. The Employer will ensure that employees are debriefed promptly when their positions are considered for upgrade by accretion of duties and the classification evaluation does not support the position upgrade. If requested by the affected employee, a Union representative may be present at the debrief. The debrief will include identification of areas of individual improvement to enhance the employee's potential for future promotion.

Section 2. Merit Promotion and Merit Staffing

- a. Appropriate OPM and Navy regulations and guidance will be followed in:
- standards and any published Selective Placement Factors;
 - notifying applicants determined not qualified by the Human Relations Office;
 - determining appropriate applicant evaluation techniques for qualified applicants such as the use of crediting plans and ranking panels; and
 - ranking applicants based on job elements derived from the established position description and/or the OPM Handbook X118.

b. The Employer will annually provide guidance to employees in the preparation of applications for promotional opportunities at NFESC.

c. The minimum area of consideration is the Naval Facilities Engineering Service Center, Port Hueneme, California. The minimum area of consideration may be expanded when the Employer determines it necessary. The Employer will notify the Union prior to expanding the area of consideration beyond the minimum area.

Section 3. Reduction-in-Force

a. Applicable laws and regulations will govern reduction-in-force actions.

b. The Employer agrees to notify the Union as soon as possible when it is determined that a reduction-in-force within the Unit is necessary. The Employer also agrees to provide the Union with the names of affected employees in the competitive levels involved, the retention register and details as to how such employees were selected when such information becomes available from the servicing Human Resources Office.

c. During periods of reduction-in-force, the Union agrees to cooperate with the Employer in communicating to employees the reason for the reduction.

d. Any career or career-conditional employee who is separated as a result of reduction-in-force and who has not declined placement equal in grade to the position held, may be placed on the Re-employment Priority List and be given preference for re-employment in accordance with applicable regulations.

Section 4. Performance Evaluation

a. The Union and the Employer agree that a performance evaluation should be designed to recognize professional performance and to improve employees' work through a fair appraisal of their performance. In giving performance ratings, the supervisor will apply standards applicable to the employee's position.

b. Employees will be evaluated on performance annually, be given a mid-term review, and given a special review anytime their performance changes significantly. Employee accomplishments may be discussed with employee prior to assignment of rating. Immediate and second level supervisors will resolve performance and evaluation ratings/factors prior to discussing rating with employees. Any changes to the employees rating or performance evaluation made after meeting with the immediate supervisor will be discussed with the employee by the second level supervisor. Employee performance must be rated against established elements and standards and be observed by the immediate supervisor for a minimum 90 day period before an Annual Performance Rating can be made. When an employee or supervisor leaves a position or organization during the performance period, a written summary (close-out) rating will be conducted and a copy provided to the employee. This close-out rating is an interim rating to be considered by the new supervisor in determining the employee's final rating of record for that performance period. If mutually agreed by the immediate or second level supervisor and the employee, the employee can have a Union representative at the performance review.

c. Performance appraisal elements and standards will be communicated in writing to the employee at the beginning of the rating period or at any time elements/standards change. Employees are encouraged to participate in the identification of these elements/standards.

d. An employee's signature, after review of the performance evaluation, indicates that he or she has reviewed the performance rating and appraisal record and that it has been discussed. The employee's signature will not be taken to mean agreement with any of the information or forfeiture of any rights of review or appeal. A copy of all official supervisor comments on the employee's performance appraisal including any final adjustments will be provided to the employee.

e. Disagreement on the annual performance rating may be documented as an attachment(s) to the appraisal form by the employee and referred to the next level supervisor for resolution. A copy of all official documents and supervisor comments on the employee's performance appraisal including any final adjustments will be provided to the employee.

Section 5. Performance

The Union agrees that the employees of the Unit should individually and collectively perform the work assigned to them loyally and efficiently. The Union, therefore, will use its influence and

best efforts to maintain the high morale and professional standards of the Unit's employees and to safeguard the integrity of their performance to the maximum extent possible.

ARTICLE 11. PERSONNEL POLICIES

Section 1. Annual Leave

a. Annual leave will accrue and be granted to employees in accordance with applicable laws and regulations. Annual leave will be granted for the period requested when the Employer determines that the workload requirements will permit. Approval of requests for annual leave for unforeseen emergency reasons will be considered as the circumstances warrant.

b. The granting of annual leave will not be restricted to the extent that earned leave is forfeited by an employee. Employees will be permitted to schedule leave throughout the year in accordance with applicable regulations, consistent with workload, to prevent forfeiture of leave.

c. When an employee must take annual leave and prior request and supervisory approval was not possible, the leave may be granted if the employee notifies and obtains approval from his/her supervisor or, in the absence of the supervisor, the designated supervisor representative prior to 0900 on the day of the absence and the leave is otherwise appropriate.

d. Previously approved annual leave will only be rescheduled or canceled for good cause or in the event of an emergency workload. If requested, a written explanation will be given to the employee. Approved leave will not be canceled for arbitrary or capricious reasons.

e. Accrued annual leave that may be subject to loss or forfeiture by an employee at the end of the year, may be restored for a period of two years when the excess leave subject to forfeiture was due to administrative error, employee sickness, or an emergency workload requirement. Processing of necessary documentation by the Employer will normally be handled promptly.

Section 2. Sick Leave

a. The Union and the Employer, recognizing the insurance value of sick leave, will encourage employees to conserve sick leave and will discourage its abuse.

b. Sick leave may be granted for medical, dental, optical or medically related examination or treatment when requested in advance of the absence.

c. When advance request for sick leave is not possible, the employee will notify and obtain approval from his/her supervisor or, in the absence of the supervisor, the designated supervisor representative prior to 0900 the day of the leave. This requirement may be waived in the event the illness or injury is such that the employee is unable to provide notification.

d. Sick leave absence in excess of three (3) working days must be supported by a medical certificate to be submitted within fifteen (15) calendar days after return to duty. In lieu of a

medical certificate, the employee's signed or oral statement explaining the nature of the illness must be provided when the illness did not require the services of a physician.

e. When the Employer has reason to believe an employee is abusing sick leave, medical certificates will, upon specific written notice, be required for absences of less than three (3) working days. This requirement will be re-evaluated at a stated period of time not to exceed one year.

f. Advanced sick leave will be permitted to all employees in accordance with current regulations. Requests for advanced sick leave must be accompanied by certification from an accredited physician of an employee's incapacity to work.

g. Sick leave may be charged to annual leave or to leave without pay if requested by the employee and approved by the Employer.

Section 3. Family Leave Medical Act (FMLA)

a. Employer and Union support the provisions of the FMLA which entitles eligible employees to take up to 12 weeks of Leave Without Pay (or in some instances, Sick Leave) during any 12 month period. Examples of covered situations include:

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

b. Employees must invoke entitlement to FMLA leave by submitting a request and providing adequate documentation to their supervisor.

Section 4. Leave Without Pay

Leave Without Pay (LWOP) will be requested and granted in accordance with NFESC Instruction 12930.3.

Section 5. Allowed Time/Excused Absence

a. Allowed time includes attendance at EEO type functions (subject to supervisor approval), FUSE Officers' official meetings, and All Hands meetings.

b. Excused absences are governed by NFESCINST 12630.2E.

c. Employees on duty at NFESC when an emergency condition occurs, may be credited with excused absence if the Command determines that the emergency condition required closing the Center or area(s) of the Center. Those employees on duty in the affected area when the

decision to close the Center is made will be given excused absence from the time set for dismissal from work to the end of the work shift.

Section 6. Civic Responsibilities

a. Court leave will be granted in accordance with current regulations.

b. The Parties recognize that local and national health, welfare and emergency relief organizations depend largely upon voluntary contributions for successfully achieving their objectives and encourage employees as individual citizens and as members of a community to contribute voluntarily to worthwhile organizations as part of their personal responsibility as citizens. To the end that campaigns will be conducted in the spirit of true voluntary giving, the Employer agrees that:

- "Fair Share" suggestions may be used for guidance and education, but the assignment of a dollar quota to an individual employee is prohibited;
- When envelopes are used, individuals who desire to keep their gifts private may use any envelope with or without a name being placed thereon;
- Supervisors will not solicit subordinates; and
- Coercion, either overt or covert, will not be practiced by collectors, supervisors or other personnel.

c. Employees on duty on the date of any National or State election and who are eligible to vote in such elections may be granted time off without loss of pay or charge of leave for the purpose of voting consistent with applicable regulations.

Section 7. Compensatory Time and Overtime

a. Professional employees within the bargaining unit are exempt employees under the provisions of the Fair Labor Standard Act. As such, the normal entitlement for overtime worked is compensatory time off in lieu of overtime pay up to an accumulated 80 hours of compensatory time. Compensatory time for authorized overtime work will be administered in accordance with applicable laws and regulations.

b. Once an employee has accumulated 80 hours of compensatory time, overtime worked should be reported as overtime and paid at the applicable overtime rate unless the employee would prefer to continue to accumulate compensatory time in lieu of payment of overtime. However, any exception to this 80 hour accumulation limit will require a specific determination by the employee's department head that an exception is in the best interest of the command. The maximum amount of compensatory time that may be carried over into the next leave year is 160 hours. Any carryover in excess of 160 hours will require a specific determination by the employee's department head, that the exception is in the best interest of the command.

Compensatory time must be used before annual leave unless the employee is in a use or lose annual leave situation. If the employee and employer mutually agree, the employee's compensatory time hours balance may be cashed out. It is understood that compensatory time may be subject to a twelve (12) month cash out requirement by the Department of Defense.

c. The work schedule at the Center minimizes the need for overtime. However, there will be occasions when overtime is determined to be necessary by the Employer. In these instances, the Employer has the right to schedule and require overtime of employees.

Section 8. Leave Charges

Charges to leave and excused absence will be granted in increments of one-tenth of an hour.

Section 9. Career Development

a. Annually, supervisors will discuss with each subordinate employee the developmental objectives in which the employee is interested, any anticipated related technological changes, the objectives the supervisor wishes to encourage, requirements of career management programs, and plans for meeting those requirements in the ensuing performance year.

b. Supervisors will counsel employees regarding training and developmental needs; the extent to which the Employer will support the employee in career related training; and the Employer's policies and procedures on advances, repayments, and operational and resource limitations.

c. The Employer encourages employees' recommendations for job required, job related and career development training. Supervisors will incorporate such recommendations, as appropriate into the employees' annual Individual Development Plans. Supervisors will, in good faith, attempt to meet the requirements of Individual Development Plans.

d. The Parties will encourage participation of employees in professional and technical societies, and staying abreast of developments in their career field through technical literature. The Parties will encourage achievement of employee recognition in their career field through professional registration, publication of technical papers and patent disclosures. To encourage and support employee participation in professional and technical societies, the Employer may become a member and pay membership fees in a professional organization if it is administratively determined that membership is necessary in carrying out the official work of the Employer.

e. The Employer agrees to consider requests for leave (annual or leave without pay) for brief periods to permit an employee opportunity to pursue a program of study which will enhance the value of an employee to the Employer.

f. The Parties will publicize significant accomplishments of employees through appropriate communications media.

Section 10. Incentive Award

The Government Employees Incentive Awards Program is designed to improve Government operations and services. The Incentive Awards Program, when vigorously supported at all levels of management on a continuing basis, contributes significantly to improving Government productivity and services. Applicable OPM and Navy regulations will govern incentive awards program actions.

a. The Employer will encourage employees to increase productivity and creativity by rewarding those whose job performance and contributions are so superior as to warrant special recognition; as well as those whose ideas via beneficial suggestions, patents or other means are adopted by the Employer based on benefit to the government.

b. The Employer and the Union agree that current OPM and Navy regulations will be used to determine criteria for recognition, eligibility, agency requirements, monetary recognition and award amounts.

c. The Employer will provide equal opportunity for all employees to earn awards by informing employees of the incentive awards program.

d. An employee inventor may be considered for cash and honorary recognition at the disclosure and patent levels even though an invention is considered to be within an employee's official duties.

e. The employee inventor may request a review whenever he or she can demonstrate that the value of the patented invention, beneficial suggestion, or project achievement to the government has increased substantially through wider application.

f. The Employer will determine tangible and intangible benefits resulting from inventions by using appropriate OPM and Navy regulations implemented by NFESCINST 5870.1.

g. Normally, acceptance, adoption and related award recommendations and suggestions will be processed within 60 days for cases which can be approved locally and 120 days where outside approval is required.

Section 11. Disciplinary Actions

a. The Employer will take disciplinary action only for just cause supported by evidence as required by law or local past practice.

b. The Union will be given the opportunity to be represented at formal discussions between a representative of the Employer and employees or employee representatives concerning grievances arising out of a disciplinary action. The Employer will annually inform employees of their rights under this section.

Section 12. Nepotism

Representatives of the Employer are prohibited from participating in the rating, ranking or selecting process if a relative is under consideration; or advocating the selection of a relative, by referring an application of a relative for consideration for employment or promotion within the Center. Any and all appearances of nepotism will be vigorously avoided.

Section 13. Appropriate Workplace Language

The Parties agree that abusive language is inappropriate conduct in the workplace and will not be tolerated. The Employer will take appropriate action against a supervisor or employee who uses abusive language towards another. Abusive language is defined as socially unacceptable language such as adverse loud, offensive, racist, ethnic, religious connotation, sexual and anatomical statements.

Section 14. Employee Privacy

The Employer agrees not to conduct an administrative search of an employee's desk file cabinets or lockers unless the employee or that employee's representative is present, or the employee has given the Employer written consent to the search.

Section 15. Security Inspections

The Employer agrees to inform the Union just prior to conducting random security inspections at NFESC facilities including unannounced inspections of motor vehicles. This notification is to give Union officials the opportunity to be present to observe the inspection.

ARTICLE 12. SAFETY AND HEALTH

Section 1. Safety and Health Program

a. The personal safety and health of each employee is of primary concern to the Employer and the Union. An occupational safety and health program which is in compliance with applicable laws and regulations will be maintained. The Parties agree to jointly participate in the safety program in order to minimize occupational illness, accidental death and injuries, material losses and damage.

b. The Parties will encourage all employees in the course of performing their regularly assigned duties to be alert to unsafe and/or unhealthy practices, equipment and conditions and to report any alleged unsafe and/or unhealthy practices or conditions to their immediate supervisor. If such conditions cannot be satisfactorily remedied by the immediate supervisor, the employee or Union will submit the matter orally or in writing to the Safety Manager for appropriate action. The affected employee(s) will not be exposed to the unsafe condition until the condition is resolved. The Employer will take timely action to correct or alleviate health

and safety threats, notify the Union as soon as possible, and will respond within five (5) working days for lesser threats.

c. The Employer will provide suitable safety equipment in keeping with the duties and responsibilities of the employees consistent with NAVOSH Program regulations and standards. The Employer will supply personal protective equipment including but not limited to prescription safety glasses, safety helmet, protective clothing, protective gloves, and safety shoes as required for employees to carry out their assigned duties.

Section 2. Video Display Terminals

The Employer encourages a periodic change in work procedures for those employees whose duties involve moderate or greater visual demand on video display terminals or computers. The Employer will provide assistance and training to employees on setting up computer work stations to enhance employee comfort and productivity. The Employer will use NAVMED P5112, Navy Environmental Health Bulletin, as a guide in achieving the above. All new monitors shall meet or exceed the MPR-II shielding standard.

Section 3. Smoking

The Employer recognizes the right of employees, working in NFESC occupied buildings, to an environment free of contaminants. Accordingly, the smoking of tobacco products within NFESC occupied space is subject to the following policy and restrictions consistent with NFESCINST 5100.2:

a. The use of tobacco products (both smoke producing and smokeless) within indoor work spaces is prohibited. Smoking in the vicinity of the work place is authorized only in designated outdoor areas which will be clearly marked with "SMOKING PERMITTED" signs and provided with appropriate ash trays/receptacles. Smokers who work in each building or sector of a building may nominate outdoor smoking areas to the Resource Management Division, Code ESC091. Once an area is approved, those using the smoking areas will maintain the cleanliness of the area and keep all nearby doors to the building closed while smoking in the designated areas. Maintaining designated smoking areas free of debris and discarded smoking materials will be prerequisite for retention of these areas as approved for smoking. The Employer agrees to provide a large picnic table umbrella for each existing table within 60 days of the contract signature date as a temporary solution. A permanent concrete and wood outdoor patio covered area will be constructed as soon as possible but no later than September 1998. In the event of a delay, management will provide the Union with the new completion date as soon as the delay is known. The Employer will maintain and if necessary replace the picnic umbrellas until the new permanent concrete and wood patio structure is completed.

b. The Employer will offer low-cost "Smoking Cessation" type programs to all smokers desiring to quit smoking. Enrollment fees may be refunded upon successful completion of the

program. The Employer will grant up to 59 minutes of administrative leave per session to smokers desiring to participate in command-sponsored "stop smoking" programs.

c. Granting of limited administrative leave for "smoke breaks" is not authorized. Use of leave authority for this purpose is inefficient to work accomplishment and unfair to non-smokers.

d. Ash trays will be removed from all work space areas. Receptacles will be placed just outside building entrances for visitors to dispose of cigarettes, cigars, etc., before they enter occupied buildings.

e. Smoking is prohibited in all government vehicles. Smoking is permitted on NFESC vessels only on those portions of weather decks where it is otherwise safe to smoke.

f. Smoking is prohibited in athletic facilities.

g. The Employer agrees to provide educational programs on smoking caused health problems. Employees seeking information concerning professional services. or assistance centers should contact the NCBC Employee Relations Division (Code 234), extension 2-2456.

ARTICLE 13. TEMPORARY DUTY TRAVEL

Section 1. Scheduling

a. The Employer will make every effort to schedule temporary duty travel time within an employee's regularly scheduled hours of duty. An employee may depart from a temporary duty station the morning following completion of a temporary duty assignment to prevent travel outside the regularly scheduled work hours when not required to be at the permanent duty station the first thing the next morning. If an employee completes a temporary duty assignment on a Friday, and the Employer determines that the employee is not needed at the permanent duty station first thing the following Monday morning, and the employee elects to delay return travel until that Monday, payment of per diem will be limited to that which would have been payable had travel begun following completion of work on Friday and continued to the destination without delay.

b. Management respects employees' needs for personal time away from their official duties (work week off-duty hours and weekends). Insofar as practicable, travel during non-duty hours shall not be required of an employee. However, there can be times when employees are required to travel on weekends in order to meet operational requirements. Management will work with the employee in making a sincere effort to reschedule requirements in order to preclude weekend travel (which might include rescheduling meetings, scheduling operations later in the week, etc.). If these efforts are not successful, the flexibility exists to change the employee's work week to accommodate the operational requirement and travel as part of the regular work week. In work situations when travel outside the employee(s) regular work week becomes a major part of meeting mission requirements during temporary duty assignments (TOY), the Employer will

make appropriate changes to the work week of affected employee(s) to ensure the most effective and efficient accomplishment of the mission and to protect the employee's personal time. The Employer reserves the right to determine when a change in the work week is appropriate to meet mission and operational requirements. If management denies an employee's request to change a work week to accommodate Sunday travel, at the written request from the employee or the union, the Employer will provide within 10 days a written statement signed by the supervisor and copied to the department head with the reason(s) for the denial.

c. An employee on official travel will not be required to travel during unreasonable hours of the night. For purposes of night travel, only staterooms aboard ships and sleeping cars on trains are considered to provide required sleeping accommodation. Reclining seats in planes, trains or buses do not constitute sleeping accommodations. An employee will not be expected to use a carrier, the schedule of which requires boarding or leaving between 2400 hours and 0600 hours, if there are more reasonable, earlier or later departure or arrival schedules that will meet the mission requirements. Early departure to secure hotel accommodations in order to retire at a reasonable time to be ready to perform official business next morning may be considered the exercise of care of a prudent person and will be considered as part of the required travel time.

d. Coach-class accommodations on commercial air carriers is the normal mode of transportation for domestic and international travel on official business. If travel is direct between authorized origin and destination points which are separated by several time zones and either the origin or destination point is outside the continental United States (CONUS) and the scheduled flight time (including stopovers) is in excess of 14 hours, an employee is eligible for: (1) a rest stop enroute not exceeding 24 hours or a rest period not exceeding 24 hours upon arrival at the duty site; or (2) an upgrade to premium-class seating when authorized by the supervisor based on documented business circumstances.

Section 2. Travel Requests/Claims

The Employer will assist and counsel employees on travel matters. Assistance in the preparation of travel claims and related forms will be provided by the Employer so that unnecessary delays and hardships on the employee will be avoided whenever possible. Employees will be given reasonable time and the opportunity to explain questionable travel claims and to correct minor errors and omissions.

Section 3. Travel Regulations

The Employer agrees to administer all matters concerning temporary duty (TDY) travel for employees consistent with current Federal Law, the Federal Personnel Manual and the Joint Travel Regulations. Employees can use frequent-flyer mileage credits earned on government travel for upgrading seating accommodations on government travel.

Section 4. Government Quarters

a. An employee who has a confirmed reservation at Government quarters for TDY and fears bodily harm at those lodgings, may be granted authorization to seek non-government quarters. Upon arrival the employee should document the concerns and call his/her immediate supervisor to discuss the situation and request authorization to find other non-government quarters. If the supervisor cannot be contacted, the employee may stay at other quarters and discuss the matter by phone with the supervisor the next day, or as soon as possible. The supervisor may disapprove the change of quarters. If that happens the employee will be required to pay the quarters expense difference. However, the disapproval is subject to the grievance procedures.

b. Employees will not be required to stay in Government quarters if the available quarters require sharing bathroom facilities with a members of the opposite sex.

c. If an employee has reservations for Government quarters and is bumped from those quarters, the employee will be authorized to stay in commercial quarters for the remainder of their stay at that TDY location.

ARTICLE 14. HOURS OF WORK

Section 1. Hours of Work

a. The hours of work for the Naval Facilities Engineering Service Center will be in accordance with alternative work schedules implemented by NFESC instruction. Establishment and termination of all future alternative work schedules is subject to negotiation with the Union before implementation.

b. A minimum thirty-minute lunch period will be scheduled daily, usually between the hours of 1130 and 1330. On occasion, employees may request to be allowed to work straight through their regular non-duty lunch period on a specified day and leave work as soon as their eight or nine hours have been completed for that day. When an employee makes such a request, the Employer will determine whether the employee's duties require constant attention or availability, and whether it is administratively desirable to allow a one day schedule change considering the organization's work needs. Granting of the schedule change will be at the discretion of the Employer. The Parties understand that it is most often to the benefit of employees and the Employer to schedule a regular non-duty lunch break so that employees may obtain rest and sustenance. It is their intent, therefore, that this provision be exercised only rarely, and only in those cases where work accomplishment will not be adversely affected. Employees requesting such a change in their schedule, will do so as far in advance as possible.

ARTICLE 15. SPECIAL PAY

Section 1. Special Pay-Adjustments

Except in situations involving disciplinary actions, when employees are changed to a lower grade, their pay will be set at the highest rate in the lower grade allowed by law, which does not exceed their current rate.

ARTICLE 16. FACILITIES AND SERVICES

Section 1. Union Office

a. The Employer will provide a private ventilated office space in a central location on the Employer's premises, at both East and West Coast facilities, for exclusive use by the Union to hear employee complaints and to conduct internal Union business outside regular working hours. This office room door shall be secured by lock and a set keys to the Union office shall be provided to FUSE.

b. The Employer will outfit the above office with furniture and fixtures which includes at least one lockable 4-drawer file cabinet and a computer.

Section 2. Telephone

The Employer authorizes the Union to use Employer telephones for calls pertaining to labor management business concerning Unit employees. Union use of Employer telephones for off-base toll calls related to labor management business concerning Unit employees is authorized only for designated Union officials.

Section 3. Off-Hour Union Meetings

Subject to prescribed security considerations and where practicable, Employer facilities may be scheduled outside regular working hours on an "as available basis" for Union meetings upon prior written request by the Union and subsequent approval of the Commanding Officer.

Section 4. Use of Center Facilities for Picnics and Barbecues

The Employer authorizes the Union to use Employer recreational facilities to hold barbecues and picnics in designated recreation areas on an as available basis. FUSE will coordinate the use of these facilities with the NFESC Recreation Association and the Resource Management Division, Code ESC091.

Section 5. Bulletin Boards

a. The Employer will provide three (3) bulletin boards each approximately nine (9) square feet in area to be located in the vicinity of the Employer's official bulletin boards. These boards

are to be used solely by the Union for posting their notices. Two (2) bulletin boards will be located at the West Coast facility and one (1) at the East Coast facility.

b. The responsibility for posting notices and removing outdated notices rests with the Union. Posting and removal by the Union will be conducted during non-duty hours.

c. Notices will contain nothing political, libelous, obscene, or defamatory in nature.

Section 6. Parking

The Parties agree that reserved parking is eliminated except for the Commanding Officer and spaces reserved for mobility handicapped personnel, government vehicles, off-station visitors, and designated car and van pools.

Section 7. NFESC Newsletter and Plan of the Week

a. The Union may have access to the NFESC Newsletter for publication of any mutually beneficial information. The Employer reserves the editorial responsibility for the newspaper.

b. The Employer will also provide space for the slate of newly elected officers and for the announcement of Union meetings in the Center's Plan of the Week.

Section 8. NFESC Electronic Mail System

The Employer authorizes the Union to use the NFESC Electronic Mail (E-mail) network to communicate with its Bargaining Unit members on its representational duties. The Resource Management Division, Code ESC091, will be provided a copy of all Union E-mail correspondence.

ARTICLE 17. DURATION

Section 1. Duration

a. This Agreement is effective upon approval by the Department of Defense and will remain in force and effect until three (3) years from date of approval. Both Parties agree that the terms and conditions of this Agreement will continue in effect until a new contract is negotiated.

b. If neither Party has requested re-negotiations by the sixtieth (60) calendar day prior to the terminal date, this Agreement will be brought into conformance with current published laws, regulations and executive orders and will be renewed for an additional two (2) year period following review and approval by the Department of Defense.

Section 2. Amendments

This Agreement may be re-opened for amendment at any time by mutual consent of the Parties. Approved amendments, supplemental agreements, or changes to this Agreement become a part of and are subject to the same time terms as the basic Agreement.

This AGREEMENT was executed on 10 July 1997 by the Parties and approved by DOD on 18 July 1997 to be effective 18 July 1997.

Appendix A
FUSE Local R-12-196
Grievance Resolution Form

Grievant's Name _____ ESC Code _____ Phone _____

Issue: _____

Date when grievance situation occurred or the employee became aware of the grievable situation:

Month Day Year (See Grievance Procedure, Article 6, Section 4, of the Negotiated Agreement)

Interests/
Concerns: 1 _____
2 _____
3 _____
4 _____
5 _____

Proposed
Resolution: _____

Grievant's Signature _____ Date _____

Does employee decline Union Representation for this grievance?

Yes Submit to Management, block B below.

No Submit to Union, block A below.

Print name Signature Date

A Received by Union:

Print name Signature Date

B Received by Management:

Print name Signature Date

Appendix B
Title 3 - Executive Order 12871 of October 1, 1993

THE PRESIDENT

Labor-Management Partnerships

The involvement of Federal Government employees and their union representatives is essential to achieving the National Performance Review's Government reform objectives. Only by changing the nature of Federal labor-management relations so that managers, employees, and employees' elected union representatives serve as partners will it be possible to design and implement comprehensive changes necessary to reform Government. Labor-management partnerships will champion change in Federal Government agencies to transform them into organizations capable of delivering the highest quality services to the American people.

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and in order to establish a new form of labor-management relations throughout the executive branch to promote the principles and recommendations adopted as a result of the National Performance Review, it is hereby ordered:

Section 1. The National Partnership Council.

(a) Establishment and Membership. There is established the National Partnership Council ("Council"). The Council shall comprise the following members appointed by the President:

- (1) Director of the Office of Personnel Management ("OPM");
- (2) Deputy Secretary of Labor;
- (3) Deputy Director for Management, Office of Management and Budget;
- (4) Chair, Federal Labor Relations Authority;
- (5) Federal Mediation and Conciliation Director;
- (6) President, American Federation of Government Employees, AFL-CIO;
- (7) President, National Federation of Federal Employees;
- (8) President, National Treasury Employees Union;
- (9) Secretary-Treasurer of the Public Employees Department, AFL-CIO; and

(10) A deputy Secretary or other officer with department- or agency-wide authority from two executive departments or agencies (hereafter collectively “agency”), not otherwise represented on the Council.

Members shall have 2-year terms on the Council, which may be extended by the President.

(b) *Responsibilities and Functions.* The Council shall advise the President on matters involving labor-management relations in the executive branch. Its activities shall include:

(1) supporting the creation of labor-management partnerships and promoting partnership efforts in the executive branch, to the extent permitted by law;

(2) proposing to the President by January 1994 statutory changes necessary to achieve the objectives of this order, including legislation consistent with the National Performance Review’s recommendations for the creation of a flexible and responsive hiring system and the reform of the General Schedule classification system;

(3) collecting and disseminating information about, and providing guidance on, partnership efforts in the executive branch, including results achieved, to the extent permitted by law;

(4) utilizing the expertise of individuals both within and outside the Federal Government to foster partnership arrangements; and

(5) working with the President’s Management Council toward reform consistent with the National Performance Review’s recommendations through-out the executive branch.

(c) *Administration.*

(1) The President shall designate a member of the Council who is a full-time Federal employee to serve as Chairperson. The responsibilities of the Chairperson shall include scheduling meetings of the Council.

(2) Council shall seek input from nonmember Federal agencies, particularly smaller agencies. It also may, from time to time, invite experts from the private and public sectors to submit information. The Council shall also seek input from companies, nonprofit organizations, State and local governments, Federal Government employees, and customers of Federal Government services, as needed.

(3) To the extent permitted by law and subject to the availability of appropriations, OPM shall provide such facilities, support, and administrative services to the Council as the Director of OPM deems appropriate.

(4) Members of the Council shall serve without compensation for their work on the Council, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law, for persons serving intermittently in Government service.

(5) All agencies shall, to the extent permitted by law, provide to the Council such assistance, information, and advice as the Council may re-quest.

(d) *General.*

(1) I have determined that the Council shall be established in compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2).

(2) Notwithstanding any other executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, that are applicable to the Council, shall be performed by the Director of OPM, in accordance with guidelines and procedures issued by the Administrator of General Services.

(3) The Council shall exist for a period of 2 years from the date of this order, unless extended.

(4) Members of the Council who are not otherwise officers or employees of the Federal Government shall serve in a representative capacity and shall not be considered special Government employees for any purpose.

Section 2. Implementation of Labor-Management Partnerships Throughout the Executive Branch. The head of each agency subject to the provisions of chapter 71 of title 5, United States Code shall:

(a) create labor-management partnerships by forming labor-management committees or councils at appropriate levels, or adapting existing councils or committees if such groups exist, to help reform Government;

(b) involve employees and their union representatives as full partners with management representatives to identify problems and craft solutions to better serve the agency's customers and mission;

(c) provide systematic training of appropriate agency employees (including line managers, first line supervisors, and union representatives who are Federal employees) in consensual methods of dispute resolution, such as alternative dispute resolution techniques and interest-based bargaining approaches;

(d) negotiate over the subjects set forth in 5 U.S.C. 7106(b)(1), and instruct subordinate officials to do the same; and

(e) evaluate progress and improvements in organizational performance resulting from the labor-management partnerships.

Section 3. No Administrative or Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

THE WHITE HOUSE,
October 1, 1993.

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Guidance for Implementing Labor-Management Partnerships (Section 2 of Executive Order 12871)

Introduction - The effectiveness of labor-management partnerships will depend on the skill, flexibility and commitment of union and agency representatives at work places throughout the Government. Within the spirit of the National Performance Review and the Executive Order, each agency and its components must help to build labor-management partnerships specifically tailored to the needs of employees, their representatives and management. The guidelines that follow are an initial effort by the U.S. Office of Personnel Management to provide guidance for implementing labor-management partnerships.

1. Establish Labor-Management Partnership Councils - Agencies and unions should give priority to forming or adapting partnership councils. They should be established at appropriate levels, which generally would include offices and installations that have authority to deal with one or more bargaining units. Partnership councils may also be established at the national level of an agency or major subcomponent of an agency.

The Parties comprising each committee or council are encouraged to commit to a "Partnership Principles Agreement." The agreement may address such matters as (1) the organizational arrangements for the partnership, (2) procedures for bargaining matters under §7106 (b)(1), and (3) procedures for resolving disputes among the Parties.

2. Involve Employees and Union Representatives as Full Partners with Management Representatives - Establishing or adapting partnership councils will be a major step in achieving partnerships. Other methods of involvement may also be appropriate and useful for both bargaining unit and non-bargaining unit employees.

3. Provide Systematic Training of Appropriate Employees in Alternative Dispute Resolution Techniques and Interest-Based Bargaining Approaches - The partnership approach to Government reform, problem solving and dispute resolution requires that all participants have certain knowledge, skills and abilities. Therefore, a first priority of business for agencies and their partnership councils should be to conduct needed training for line managers, firstline supervisors and union representatives who are Federal employees. As a first step, training should be provided to management and union representatives who will be conducting bargaining in the near future. Any training provided in this context should include training in communication and cooperation skills. This training will need to be conducted on a continuing basis to reflect new approaches and to meet the training needs of new personnel. The Federal Labor Relations Authority, the Federal Mediation and Conciliation Service and the Office of Personnel Management are available to assist agencies to conduct such training.

4. Negotiate Over the Subjects Set Forth in 5 U.S.C. §7106(b)(1) - These subjects—the numbers, types and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, and the technology, methods and means of performing work—are directly related to specific agency reinvention initiatives and to achieving the National Performance Review goal of making Government work better and cost less. Bargaining over these subjects will also be a new experience for virtually all management and union representatives. Until the Federal Service Labor-Management Relations Statute was passed in 1978, bargaining over these subjects was prohibited; since 1978 such bargaining has been permitted at agency discretion but only rarely has that discretion been exercised. Under Executive Order 12871, bargaining over the subjects set

forth in 5 U.S.C. §7106(b)(1) is now mandatory, and a failure by agency managers to engage in such bargaining would be inconsistent with the President's directive. Therefore, Partnership Principle Agreements shall include a commitment by the Parties to bargain over these formerly discretionary subjects.

The obligation to bargain in §7106(b)(1) commences with the effective date of Executive Order 12871 but does not include matters covered for which formal notice was provided prior to October 1, 1993 and the right to bargain was waived by the union.

It is essential that bargaining in these areas be undertaken in a constructive and well-planned manner and that it take place less in an adversarial setting with Parties bringing their positions to the table, but increasingly through interest-based bargaining that insists upon consensus decision-making and trust within the partnership. Consequently, agency and union representatives should identify issues and opportunities for such bargaining and agree on preparations and procedures for conducting it. Specifically, we recommend that the agency and union representatives who will conduct the bargaining first be trained in consensual or problem-solving bargaining techniques, such as "win-win" or interest-based bargaining.

Bargaining over §7106(b)(1) subjects will raise a variety of questions, some of which are addressed in the following bargaining principles:

a. Agency and union representatives will bargain over §7106(b)(1) subjects in good faith, using interest-based bargaining, with the objective of reaching an agreement.

b. In the event the Parties are unable to reach an agreement, they are encouraged to use the Federal Mediation and Conciliation Service as well as any other mutually agreed-upon dispute resolution processes. Every effort should be made to reach agreements that address the interests of both Parties. If that does not result in an agreement, either party may, in accordance with 5 U.S.C. §7119, take the impasse to the Federal Service Impasses Panel or to an arbitrator agreed upon by the Parties under procedures approved by the Panel. In the event of agency head review of a Panel-ordered resolution, the agency may not declare the proposal nonnegotiable because it is a §7106(b)(1) subject.

c. In the spirit of partnership, and to implement the Executive Order, agencies shall agree to bargain over the substance of §7106(b)(1) subjects, whether at the union's request or as the result of a proposed agency action.

d. Consistent with the interest-based bargaining, all proposals should be evaluated against agreed-upon criteria. As specifically stated by the National Performance Review, the primary criterion should be to make Government capable of delivering the highest quality services to the American people. This covers such matters as achieving service to the public equal to the "best in the business," improving productivity, streamlining operations and reducing overcontrol and micromanagement.

Therefore, the Parties to bargaining should, to the maximum extent feasible, provide for the integration of all interests (i.e., employees, their unions, management and the public) with regard to work place issues. Together, agencies and unions should strive for broadly supported solutions to work place problems and for high-quality outcomes.

e. In the course of bargaining, the Parties should make every effort to avoid disputes over whether a proposal on a §7106(b)(1) matter is nonnegotiable because it also conflicts with §7106(a) management rights. Rather, the Parties should focus on the intent of the proposal and on ways to reformulate it in a manner that does not result in a conflict with §7106(a).

5. Evaluate Progress and Improvements in Organizational Performance Resulting From Labor-Management Partnerships - At each work place where there is a partnership council, agency and union representatives should develop a plan for evaluating the impact of their partnership on organizational performance. The scope and methods of this evaluation should be feasible and useful to the participants. Assistance in developing an evaluation plan may be available from agency and union sources and from the Federal Mediation and Conciliation Service, the Federal Labor Relations Authority, the Office of Personnel Management and the Department of Labor.