

LABOR/MANAGEMENT AGREEMENT

BETWEEN

USDA NEW YORK FARM SERVICE AGENCY

AND

**AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES
LOCAL 2831 (AFL/CIO)**

EFFECTIVE DATE — 07/15/2003



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Index of Articles - Labor/Management Agreement

	PAGE
Preamble	3
Article 1 - Definitions	4
Article 2 - Recognition and Unit Designation	5
Article 3 - Employer - Union Relations	6
Article 4 - Mid-Term Bargaining	7
Article 5 - Employee Rights and Responsibilities	8
Article 6 - Rights and Responsibilities of Employer and Union	10
Article 7 - Employee Morale	11
Article 8 - Leave (General)	13
Article 9 - Hours of Duty	17
Article 10 - Flexi-Place	20
Article 11 - Job Sharing	25
Article 12 - Employee Training and Development	27
Article 13 - Grievance Procedure	28
Article 14 - Contracting Out	31
Article 15 - Position Classification	32
Article 16 - Reduction In Force	33
Article 17 - Disciplinary and Adverse Actions	35
Article 18 - Official Time	37
Article 19 - Health and Safety	38
Article 20 - Travel/Temporary Duty (TDY)	40
Article 21 - Use of Official Facilities	41
Article 22 - Performance Appraisal System	43
Article 23 - Printing and Distribution of the Agreement	47
Article 24 - Duration of Agreement	48
Article 25 - Dues Deduction	49

Article 26 - Merit Promotion	50
Article 27 - Adverse Weather	59
Appendix A – Memorandum of Understanding	62
Exhibit 1 – Telecommuting (Flexiplace) Employee/Supervisor Agreement	64
Exhibit 2 – Self-Certification Safety Checklist for Home-based Telecommuters	67
Exhibit 3 – Request for Official Time	69

PREAMBLE

This Collective Bargaining Agreement (herein after referred to as the "Contract") is entered into by and between the American Federation of Government Employees Local 2831 (herein after referred to as the "Union") and the USDA, Farm Service Agency, New York (hereinafter referred to as the Employer, Agency, or Management").

The parties mutually recognize that the Congress of the United States has expressed Public Policy concerning labor relations in the Federal Government as follows:

"The 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 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 USC 71)

All past practices which do not conflict with the terms and conditions of this agreement remain in full force and effect as long as they are consistent with the laws and existing government rules and regulations. Negotiated agreements and MOU's that are not incorporated into this Contract will become null and void upon ratification of said Contract.

Pursuant to this policy, the parties have agreed upon the various articles hereinafter set forth. This agreement constitutes a Collective Bargaining Agreement between USDA, Farm Service Agency, New York State and the American Federation of Government Employees – AFL-CIO- Local 2831.

The parties of this agreement recognize that they have a mutual and cooperative interest in accomplishing the mission of USDA, FSA. They agree accomplishments will be greater by creating an atmosphere of trust and open communication between labor and Management. This Agreement is being negotiated within the context of 5 USC Chapter 71.

ARTICLE 1 - DEFINITIONS:

The following terms used in this agreement are defined as follows:

1. **BUE:** Bargaining Unit Employees are all federal employees employed by USDA Farm Service Agency in New York State, excluding Management officials, supervisors, and employees described in 5 U.S.C. 7112(b)(2),(3),(4),(6) and (7).
2. **Union:** American Federation of Government Employees, Local 2831, Exclusive Representative of the BUE within USDA, FSA, NYS.
3. **Agency, Management, Employer:** Management/Supervisors of the USDA, Farm service Agency
4. **Emergency Situation:** An emergency situation is one which poses sudden immediate and unforeseen work requirements for the employer or agency as a result of a natural phenomena or other circumstances beyond the employer's or Agency's control or ability to anticipate.
5. **Days:** Actual work days, unless otherwise noted.
6. **Conditions of Employment:** Conditions of Employment; Personnel Policies, practices and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters relating to political activities prohibited under Subchapter 3 of Chapter 73, of Title 7, relating to the classification of any position, or to the extent such matters are specifically provided for by federal statute.
7. **Collective Bargaining:** The performance of the mutual obligation of the Agency Representative and Exclusive Representative of the employees to meet at reasonable times and consult, and bargain in good faith to reach an agreement with respect to the conditions of employment affecting such employees. The representatives are obligated to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but obligation referred to in this paragraph does not compel either party to agree to a proposal or to make concession.
8. **Arbitration:** A hearing where an individual employee or group of employees is seeking resolution through the arbitration process.
9. **Interest Arbitration Hearing:** An arbitration hearing where Management or the Union is seeking resolution on global issues through arbitration process.
10. **ULP:** Unfair Labor Practice
11. **Union Official:** Elected or appointed representative of the Union.
12. **Impasse:** The state of inability of the representatives of the Employer and the Union to arrive at a mutually agreeable position, concerning negotiable matters, through the bargaining process.
13. **Seniority:** Based on an employee's service computation date (SCD).

ARTICLE 2 - RECOGNITION AND UNIT DESIGNATION

SECTION 1: The Employer hereby recognizes that the Union is the exclusive representative of all employees in the unit as defined in Section 2 of this Article.

SECTION 2: As described in the Memorandum of Understanding Concerning Successorship Arrangements between the American Federation of Government Employees and the United States Department of Agriculture, Farm Service Agency, the unit to which this agreement applies is comprised of all Federal employees employed by USDA Farm Service Agency in New York State, excluding Management officials; supervisors; and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7).

ARTICLE 3 - EMPLOYER-UNION RELATIONS

SECTION 1: The purpose and intent of Farm Service Agency and the Union is to promote and improve the efficient administration of the Government and the well being of its employees and to establish a basic understanding of relative personnel policy, practices, working conditions and matters affecting conditions of employment.

SECTION 2: It is understood that participation of the Union in the formulation (State only) and implementation of personnel policies and practices as specified in this Agreement, contributes to the efficient administration of the Government.

SECTION 3: Management agrees that no new State policies will be formulated contrary to the provisions of this Agreement.

ARTICLE 4 - MID-TERM BARGAINING

SECTION 1: It is agreed by Management and the Union that supervisors and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published agency policies and regulations in existence at the time the agreement was approved; and by subsequently published agency policies and regulations required by law.

SECTION 2: The employer agrees to give the union proper notice of any proposed change in personnel policies or working conditions of bargaining unit employees or any other proposed change that will impact on those employees. If the Agency inadvertently implements a change that impacts employees without notifying the Union or without providing the opportunity to bargain, the Agency upon notification will cease the practice. The Union will then be provided information and the opportunity to negotiate over the changes before implementation continues.

ARTICLE 5 - EMPLOYEE RIGHTS AND RESPONSIBILITIES

SECTION 1 - The parties agree that in the interest of maintaining a congenial work Environment, both supervisors and employees will deal with each other in a professional manner and with courtesy, dignity, confidentiality and respect. To that end, all employees should refrain from coercive, intimidating, loud or abusive behavior.

SECTION 2: An employee shall have the right to bring work-related matters to the attention of their supervisor without fear of reprisal. This right may be exercised individually or collectively by an appointed spokesperson.

SECTION 3: Each employee is accountable to the Employer for performance of assigned duties and compliance with governing regulations. Within this context, the Employer affirms the right of employees to conduct their private lives, as they deem proper, providing such conduct does not adversely affect the confidence of the public in the integrity of the Government.

SECTION 4: The Union and the Employer agree that employees will:

- A. Conscientiously perform assigned duties.
- B. Comply with applicable standards of conduct as prescribed by Farm Service Agency on the day of execution of the Labor Management Agreement.
- C. Cooperate with and strive to maintain good working relations with supervisors and fellow employees.
- D. Cooperate in and promote programs designed to improve work methods and conditions.

SECTION 5: Employee Rights - Each employee shall have the right to form, join or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except, as otherwise provided under this chapter, such right includes the right -

- A. To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and
- B. To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

SECTION 6: Upon request of the employee, a representative of the Union shall have the opportunity to be present at any examination of an employee in connection with an investigation where the employee reasonably feels discipline may result. When an employee exercises this right and a representative of the Union is not immediately available, it will be delayed for a reasonable period of time, normally not to exceed 72 hours, to permit the presence of a Union representative.

SECTION 7: If an employee desires consultation with a Union representative during working hours for labor-management business, they will arrange with the supervisor prior to leaving the worksite. Supervisors will grant reasonable requests for temporary absences for this purpose at such times and for such a period of time as the employee can be excused. If this departure would create immediate problems, the supervisor will inform the employee of the earliest time that they would be free to leave for their consultation, but in no case more than 24 hours. When a supervisor denies a request after 24 hours have elapsed, he/she will put forth his/her reasons in writing.

SECTION 8: Employees will be kept informed of information concerning mission and general job welfare. Employees are encouraged to seek guidance/clarification when they believe information is incomplete or ambiguous.

SECTION 9: The Employer and the Union shall annually inform bargaining unit employees of their rights under 5 USC 7114(a)(2)(B), including but not limited to posting a notice on the official bulletin boards.

SECTION 10: Employees have the right to participate in picketing against the Employer or any other organization provided such picketing does not obstruct, interfere or inhibit with Agency operations and is in accordance with 5 U.S.C. 71. It shall be an unfair labor practice for a labor organization to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations or to condone any activity previously described by failing to take action to prevent or stop such activity.

SECTION 11: Nothing in this agreement shall cancel or annul any employee right or require an employee to become or to remain a member of a labor organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.

SECTION 12: An employee shall not be disciplined or otherwise discriminated against because he or she has filed a complaint or given testimony under the Civil Service Reform Act, the grievance procedure, or any other redress procedure available.

SECTION 13: The parties agree that, to the extent possible, instructions, directives and orders communicated to employees by Management officials should be reasonably consistent. An Employee who does not understand an instruction, directive or order has the right to request clarification of that communication. To the extent possible, a supervisor's instruction, directive or order must be complied with once given, whether or not the employee believes those instructions to be consistent, fair or reasonable. An employee who concludes that a supervisor's instruction, directive or order is not consistent, fair or reasonable has the right to pursue his or her dissatisfaction through the negotiated grievance procedure.

SECTION 14:

- A. Supervisors and employees often obtain information that must be kept confidential. Such information may involve private, personal or business information that has been furnished in confidence. Information received under a pledge of confidence is not to be divulged to unauthorized persons.
- B. Supervisors and employees may disclose information which they reasonably believe evidenced:
 - 1) A violation of any law, rule, or regulation, or
 - 2) Mismanagement, a gross waste of funds, and abuse of authority or a substantial and specific danger to public health or safety.
- C. Supervisors may share confidential information with their supervisor, Human Resource Officer, Administrative Officer and/or any other appropriate officials necessary to obtain advice, consult or plan.

ARTICLE 6 - RIGHTS AND RESPONSIBILITIES OF EMPLOYER AND UNION

SECTION 1: The Employer, the Union and the employees shall be governed by existing laws of the United States, regulations and policies of appropriate authorities including the Office of Personnel Management, published Agency policy which may be applicable and in existence at the time of approval of this agreement.

SECTION 2: The Union is provided by Statute to be present and enter into formal discussions between Employer and employees concerning grievances, personnel policies, and practices, and other matters affecting general conditions of employment of the employees of the bargaining unit.

When possible, notice of time, location and general nature of the subject matter will be given to the Union at least ten (10) days prior to any formal discussions.

The Employer will consider such views in the formulation, development, and implementation of Management decisions.

SECTION 3: The Employer retains certain Management rights under the Statute, including the right to determine the mission, budget, organization, number of employees, internal security practices; to hire, assign, direct layoff, suspend or remove employees; to assign work; to make decisions about contracting out; select from appropriate sources; and take action in emergencies. Nothing in this agreement abridges either the rights of the Employer or the Union as provided for in Statute and applicable EO.

SECTION 4: The Union recognizes its responsibilities to fairly and impartially represent the interests of all employees in the bargaining unit in all situations where the Union is the Exclusive Representative. Statutory obligations will not extend to situations where the Union is not acting as the exclusive representative. If the employee has the right to choose a representative other than the Union, there is no basis for requiring the Union to furnish its services.

ARTICLE 7 - EMPLOYEE MORALE

SECTION 1: Employees shall have a clean, dry, heated, lighted and well-ventilated area in which to eat their lunch & perform their duties. Employees who utilize these areas are responsible for maintaining the area for cleanliness and orderliness. Areas of concern should be made in writing and forwarded to their immediate supervisor. The Agency will be responsible to report and resolve as appropriate the problem with the local FAC or State SAC within a reasonable amount of time.

SECTION 2: Each employee shall receive an in process orientation within 3 days of entering on duty. This will include information on the supervisory chain of command and conditions of employment. The employee and supervisor will sign the orientation checklist to signify that the information has been provided. The Union official or designee will be notified within 10 days of the new employee entering on duty and within the next 30 days, the Union will be provided 30 minutes of time for reviewing Union related material with the new employee.

SECTION 3: It is agreed: In accordance with workman's compensation, if a medical determination from appropriate medical authority is made that an employee can work with certain restrictions/limitations on activities, and there is work within the activity that can be performed within those restrictions/limitations, the employee will be directed to return to work, will return to work, and will be assigned to work consistent with those limitations until:

- 1) The limitations have been removed or changed.
- 2) The employee is separated or reassigned.
- 3) The employee is retired or retires for disability.

SECTION 4: The Employer will assign duties to employees consistent with mission requirements and the employees Job Description. Work assignments will be made in a manner reflective of the grade level and performance requirements of the employee.

SECTION 5: The Employer agrees that employees shall be specifically assigned to one supervisor. Any delegation of authority to another appropriate supervisor for absences or other mission requirements will be done in writing. Delegations to positions with known promotion potential will be done on a rotating basis of 120 days. These details will be documented appropriately. Short-term details will be specified in writing and rotated.

SECTION 6: Performance appraisals systems must provide among other things, for recognizing and rewarding employees whose performance so warrants.

SECTION 7: Details of more than 25 consecutive days shall be on a fair and equitable basis. Employees detailed to a higher graded position for a period of more than 15 workdays must be temporarily promoted. The employee will be paid for the temporary promotion beginning the first day of the detail. The temporary promotion will be initiated at the earliest date it is known by Management that the detail is expected to exceed 15 workdays. The 25 consecutive work day provision will not be circumvented by rotating employees into a higher graded position for less than 15 work days in order to avoid paying the higher rate. Management will make every effort to avoid placing a Union official on a detail. If placed on detail, arrangements would be made to accommodate the Union official as to enable their continued representational duties

SECTION 8: - Smoking cessation classes will be made available to all employees who wish to quit smoking. Attempts will be made to utilize programs at locations convenient to the employees' work-site. Attendance by an employee for the duration of the first program will be charged to administrative leave. The cost of the initial program will be borne by the Employer not to exceed \$50.00

SECTION 9: Any correspondence concerning bargaining unit member's employment status from Management or the Agency to the employee (i.e. within grade increases, travel, etc.) will be placed in an open addressee only envelope to the affected employee.

SECTION 10: Management recognizes and understands that free parking should be afforded to all employees. It is also understood that every effort will be made during the next negotiation of the State Office lease to secure free parking for all employees. However, at the present time, the Employer will provide for four (4) free off-site parking places. The Union will disseminate these places.

ARTICLE 8 - LEAVE (GENERAL)

SECTION 1: Annual Leave

Employees shall accrue annual leave in accordance with existing applicable laws and regulations. The employer and the union agree that the employee should schedule annual leave so as to avoid leave forfeiture. An approved absence, which would otherwise be chargeable to sick leave, may be charged to annual leave, if requested by the employee and approved by the employer. However, annual leave may not be substituted for sick leave on a retroactive basis solely for the purpose of avoiding a forfeiture of annual leave at the end of the year, unless specifically authorized by law or regulation.

Employees will submit a tentative request for annual leave on/or before the first (1st) of February each year. Requests will be submitted in accordance with Section 8 (below). All requests will be considered as of February 1st for the period February 1st through January 31st. In scheduling leave, due consideration will be given to the employee's wishes. Supervisors shall not refuse to approve leave when this would result in leave being forfeited provided the request is made prior to pay period 23. Supervisors will explain the necessity for cancellation of any leave, which has been previously approved. Denial of use of annual leave will be based upon factors which are reasonable, equitable, and which do not unfairly discriminate against any employee or group of employees.

- A. When there is a conflict in annual leave requests which cannot be resolved through discussion, such a conflict will be resolved on the basis of the following considerations, which are listed in priority order:
 - 1) Timely submission of requests for annual leave.
 - (a) Employees who have submitted annual leave requests for the year prior to 1 February will be given consideration ahead of those who have submitted their annual leave requests for the year after 1 February.
 - (b) After 1 February, those who request changes or additions to their annual leave will be given priority based on date of submission of such request.
 - (c) Seniority within the unit of assignment.
 - (d) Prior leave granted for a particular day or time frame (e.g. day after Thanksgiving, Christmas week).
- B. It is understood that seniority may not be used again in future years for use of annual leave on the same day or time frame until all other unit employees have had an opportunity to utilize leave for the particular time frame.
- C. Unscheduled leave is any leave not approved and scheduled as of February 1st. Requests for unscheduled leave will be requested and reported in accordance with Section 8, and with as much advance notice as possible. Normally, the supervisor will act upon such requests within two (2) working days of the date of receipt.

SECTION 2: Sick Leave

- A. Sick leave will be granted to the extent due and accrued to employees when they:
 - 1) Receive medical, dental, or optical examinations or treatment.
 - 2) Are incapacitated for the performance of duties by sickness, injury, pregnancy, or confinement.
 - 3) Would jeopardize the health of others by his/her presence at his/her post of duty because of exposure to a contagious disease.
 - 4) Must be absent from work for adoption related activities.
- B. Approval of sick leave may be granted to employees when they are incapacitated for the performance of their duties by sickness, injury or pregnancy and confinement and when they have notified their immediate supervisor, or someone designated to receive such a report, as soon as possible at the beginning of the workday. It is understood that it is not always possible to notify the immediate supervisor at the beginning of the business workday due to circumstances beyond the employee's control, such as the need to be in transit to medical facilities or by being physically incapacitated. It is the responsibility of the employee to see that his/her supervisor, or someone designated to receive such notice, is notified by telephone or other means as soon as feasibly possible if he/she is

prevented from reporting to work because of an incapacitating illness or injury. (If supervisor and/or designee is not available on the initial call, the employee will leave a number to call or will attempt to contact the supervisor/designee again. It is not sufficient to leave a message stating that the employee will not be coming in to work, as this does not constitute a request for leave.) Sick leave requests for medical, dental, or optical examination or treatment shall be submitted to the supervisor for approval in advance with as much notice as possible. The employer and union agree to encourage employees to conserve their sick leave by scheduling such appointments, if possible, for non-duty hours.

- C. Employees whose absence exceeds three (3) days will normally be required to furnish a medical certification to justify the absence. In lieu of a medical certificate, when such a certificate would normally be required, an employee's signed statement explaining the nature of his/her illness may be accepted if the employee is not under "Leave Restriction" and when in the judgment of the supervisor it is believed to be unreasonable to require a medical certificate because the nature of the illness does not require the services of a physician. When medical certification is required, such certification will be provided by the employee to the employer within 48 hours of return to duty.
- D. In individual cases where there is evidence to support that an employee is abusing sick leave privileges, a medical certificate will be required to support an application for sick leave except for pre-approved sick leave of one day or less. In such cases, the employee concerned shall be notified in writing, in advance, that all future sick leave absences, except as stated above, will have to be supported by a medical certificate. The written notice will also explain the reason why the employee is suspected of abusing sick leave. The notification will be reviewed quarterly. If in the judgment of the supervisor, sick leave is no longer being abused, the supervisor may cancel the notification and notify the employee in writing that it has been canceled.
- E. An employee who has received a letter of restriction must submit satisfactory medical certificates for all absences due to sickness. Failure to submit such certifications will result in denial of sick leave for the uncertified absences and such other disciplinary action as the facts and circumstances may warrant.
- F. Sick leave abuse is defined as a pattern of excessive, regular use, such as every Monday or Friday, or after or before holidays on a regular basis, etc. These are just examples and do not represent all patterns that would be considered abuse. Scheduled appointments are not reflective of patterns.
- G. Sick leave may also be used, in a limited amount.
 - 1) For the following:
 - (a) To provide care for a family member as the result of illness, injury, pregnancy, childbirth or medical dental or optical examination or treatment.
 - (b) To make arrangements necessitated by the death of a family member or attend the funeral of a family member.
 - 2) For (a) and (b) above full-time employees may use up to 40 hours of sick leave each leave year. An additional 64 hours of sick leave may be used if the employee maintains a balance of 80 hours sick leave in his/her sick leave account.

SECTION 3: Advanced Leave

Advanced sick leave, advanced annual leave and leave without pay will be requested and approved in compliance with applicable laws and regulations.

SECTION 4: Leave Without Pay

Employees may be granted leave without pay at their request when approved by the immediate supervisor. It may be granted whether or not the employee has annual or sick leave to his/her credit. Extended leave without pay may be approved for such purposes as education which would be of benefit to the employer, recovery from illness or disability, or protection of employee status and benefits pending action on claims for disability retirement or injury compensation.

SECTION 5: Family and Medical Leave

In accordance with applicable law and regulations, employees with appropriate medical documentation, may invoke their entitlement to 12 weeks of (leave without pay) during any 12 month period for:

- A. The birth of a child and the care of the newborn.
- B. The placement of a child with you for adoption or foster care.
- C. The care of your spouse, child or parent with a serious health condition.
- D. Your own serious health condition that makes you unable to perform the duties of your position.

This section does not preclude the use of Annual or sick leave (if available) in accordance with sections 1 and 2 above.

SECTION 6: Leave for Religious Observance

Any employee may elect to work compensatory time for the purpose of taking time off without charge to leave when their personal religious beliefs require that they abstain from work during certain periods of a workday or workweek. Any employee who elects to work compensatory time for this purpose shall be granted an equal amount of compensatory time off (hour for hour) from his or her scheduled tour of duty. An employee may work such compensatory time before or after the grant of time off for religious observances. A grant of advanced time must be repaid by the employee on an hour-for-hour basis within a reasonable period. An employee's request to take compensatory time off for this purpose may be approved by his or her supervisor using the same procedures as in section 1. If no productive overtime is available to be worked by the employee at such time as he or she may initially request, alternative times are to be arranged for the performance of the compensatory overtime work.

SECTION 7: Excused Absences. (Holidays, Military and Court Leave, Voting, and Other Excused Absences)

- A. An excused absence is an absence from duty administratively authorized without loss of pay and without charge to leave.
- B. Excused absences without charge to leave or loss of pay are authorized in the following situations:
 - 1) To perform jury duty. Employees who are excused by the court for a day or a substantial part of the day will return to duty. Substantial will be defined as more than four hours remaining in their tour of duty.
 - 2) To testify before a court in their official capacities when summoned or assigned by their employer.
 - 3) To testify in court in a non-official capacity on behalf of a state or local government when summoned as a witness.
 - 4) To testify in court in a non-official capacity on behalf of the US government when summoned or assigned by their employer. Employees who are excused by the court for a day or a substantial part of the day will return to duty. Substantial will be defined as more than four hours remaining in their tour of duty. The employee may not, however, be required to return to duty if it would work a hardship on him/her.
 - 5) Medical Examinations - For medical and x-ray examinations required by the Agency an excused absence up to one full day will be granted for physical examinations conducted when an employee is in normal duty status.
 - 6) Military leave. Employees will be entitled to military leave in accordance with applicable laws and regulations.
 - 7) Voting and registration. If an employee's voting place is beyond normal commuting distance or where the polls are not open at least three (3) hours either before or after an employee's regular hours of work, and vote by absentee ballot is not permitted, he or she may be granted an amount of excused leave which will permit him or her to report for work three hours after polls open or leave work three hours before polls close, whichever requires the lesser amount of time off.
 - 8) Holidays. All eligible employees shall be entitled to all holidays as designated by law, regulation, or executive order. Employees may be required to work on a holiday. In the event an employee is required to work on a holiday, he/she will be paid the appropriate holiday rate to the extent permitted by law or regulation.
 - 9) Emergency rescue or protective work. Subject to supervisory approval, employees who are members of chartered emergency rescue squads or volunteer fire companies recognized by civil authorities and operating in areas near the installation may be authorized up to 40 hours excused absence during the leave year. Employees must make their supervisors aware of their outside

activities such as volunteer fire fighting or rescue squad work if they intend to request excused absence. Upon return to duty, squad members will furnish a statement signed by squad official describing the specific emergency. This statement will support the employees' time and attendance report.

- 10) Blood Donations. Employees will be given up to four (4) hours of administrative time for which the employee would otherwise be in a duty status for the donation of blood.
- 11) Preventive Health Services. Employees will be given 4 hours annually of administrative time to attend appointments for preventive health screenings. This includes but not limited to:
 - (a) Cancer Screening (i.e. prostate, breasts, cervical, Colo-rectal, etc.)
 - (b) Screening for Sickle Cell Anemia, blood lead level, cholesterol, etc.
 - (c) Other Adult Preventive Health Screenings.

SECTION 8: Supervisors and employees will share equal responsibility to insure leave usage is reported to the respective timekeeper. Approval of leave may be by whatever written means is appropriate (i.e. SF-71, e-mail, memos) within each office structure. However, all leave will be reported to the timekeeper on a SF-71. Leave may be made in 15-minute increments.

ARTICLE 9 - HOURS OF DUTY

SECTION 1: Basic work requirements.

- A. Basic workweek shall be Monday through Friday.
- B. Basic workday shall be 8:00AM to 4:30PM.
- C. A minimum of two employees must be on duty on any workday per office. (The employer has the right to limit the number of employees not working on any workday per office.)
- D. Overtime hours are all hours in excess of scheduled workday.
- E. Lunch: A lunch will be scheduled at approximately mid-point of the duty day and the length of the lunch period, not to exceed (1) hour.
- F. If employees wish to have a lunch break longer than 30 minutes they may do so by extending their workday by the additional amount of time taken at lunch.
- G. Because lunch periods vary considerably and tend to be unpredictable at training and at mandatory meetings called by management, employees will normally be granted administrative leave, excused absence, or other appropriate arrangements to alleviate any adverse impacts from participation from extended lunches.

SECTION 2:

- A. Both parties recognize that the use of alternate work schedules (AWS) and flextime can improve productivity and morale and provide greater service to the public. Any choice of an alternative work schedule must be mutually acceptable to the supervisor and the employee.
- B. Both parties recognize that certain positions because of the nature of the work performed, may not be suitable for AWS or flextime.
- C. Employees shall be permitted to vary their work schedules as follows, subject to the limitations set forth in paragraph b. above:
 - 1) Standard Flexitour - An employee may vary their arrival and departure time provided that the employee is on duty within the core hours of 9:00AM to 3:30PM and they account for a total of eight (8) hours of duty time. Having once selected arrival and departure time within flexible time bands, the employee must adhere to these times until periodic opportunity to change arises.
 - 2) Alternative Work Schedules (AWS) - Examples of AWS available to employees may be:
 - (a) Compressed 5/4-9 Schedule - A schedule which, within a pay period of ten (10) workdays, includes eight (8) nine (9) hour days, one (1) eight (8) hour day, and one (1) non-work day.
 - (b) Compressed 4/10 Schedule. - 10 hour work schedule that includes working 4 (10) hour days scheduled with one non-workday per week.
 - (c) Maxiflex Schedule
 - (1) The supervisor is responsible for determining whether conditions such as office coverage may restrict certain positions from Maxiflex participation.
 - (2) Employees must work an 80-hour pay period of 10 or fewer workdays per pay period.
 - (3) Employees must establish daily work hours of no less than 6 hours and no more than 10 hours on a given workday, excluding lunch breaks and credit hours.
 - (4) Daily work hours must cover core hours.
 - (5) Employees select a starting time each day, e.g., 8:00 am (so that the supervisor may know generally when to expect the employee). However, the employee may change the daily starting times within the established flexible hours of 6:00 am to 9:00 am.
 - (6) Supervisors may require that an employee provide advance notice when the employee will not be arriving within the established glide time of 30 minutes of their anticipated arrival time.
 - (7) The employee's scheduled number of hours for that day must be completed by 6:00 pm.
 - (8) The employee is responsible for choosing a biweekly schedule and submitting it to their supervisor on form FSA-956 for approval.

3) Hours of Duty

(a) Maxiflex

- (1) Hours an employee works under a Maxiflex schedule are to be recorded on a minute-to-minute basis. Exact arrival and departure times are to be recorded for each employee on a daily basis.
- (2) Under Maxiflex, work schedules may vary. Employees may work:
 - ◆ Example 1: 1 week: M -10 hours, T -10 hours, W -6 hours, Th -10 hours, F -8 hours; 2nd week: M -7 hours, T -7 hours, W -7 hours, Th -7 hours F -8 hours.
 - ◆ Example 2: A traditional 8-hour, 5-day workweek.
 - ◆ Example 3: 1st week: M-F -9 hours; 2nd week: M-W-9 hours, Th-8 hours. While this appears to be a 5/4-9 CWS, the employee is under Maxiflex and is eligible to earn credit hours. In addition, the holiday pay the employee earns is 8 hours.
- (3) In accordance with Agency regulation (Notice PM-2244, dated May 4, 2001), employees may not work more than 12 hours per day (exclusive of lunch period). This includes regular tour of duty and credit hours.
- (4) Employees will be allowed to request Maxiflex schedule changes as needed throughout the year.

4) Standard Flexitour Schedule

- (a) The employee is responsible for choosing a biweekly schedule within the hours of 6:00 am to 6:00 pm and submitting it in writing to their supervisor for approval.
 - (b) The requested hours are limited to an 8-hour, 5-day workweek.
 - (c) Employees will be allowed to request a change in Flexitour hours not to exceed four times per year.
- D. Having once selected one of the AWS described above, the employee must adhere to the schedule until a periodic opportunity to change arises.
- E. In the event the employer deems it necessary to propose termination of an employees participation in the employees flexitour or AWS, the affected employee will be notified in writing. The notification for the termination will include specific reasons and instances of adverse impact on Agency operations that clearly establish why flexitime, AWS, should no longer be appropriate for that employee.

SECTION 3: Employees may not request changes in flexitime or AWS more often than each quarter. By mutual agreement, in advance, between a unit employee and their supervisor, the scheduled day off can be changed in a pay period.

SECTION 4: Premium Pay - Premium pay will be paid in accordance with applicable laws and regulations.

SECTION 5: Holiday – With the exception of Sunday, when the holiday falls on the employee's first or second nonworkday, the preceding workday shall be designated as the "in lieu of" holiday, and when the holiday falls on the third or fourth nonworkday, the next workday shall be designated as the "in lieu of" holiday. When the holiday falls on a Sunday nonworkday, the employee's "in lieu of" holiday is the succeeding workday.

SECTION 6: Break Period

Employees will be allowed a 15-minute break during each morning and afternoon.

SECTION 7: Overtime

- A. Any employee in the unit will be compensated at overtime rates for all overtime work officially ordered by the supervisor to whom the authority has been delegated to order overtime and which has been performed by the employee, unless the employee is eligible for and has elected to take compensatory time IAW applicable regulations.
- B. When assigning overtime, the employer agrees to consider, but not be limited to, the following factors:

- 1) Special skill requirements of the work.
 - 2) Special project requirements.
 - 3) Continuity on jobs.
 - 4) Qualifications of employees.
 - 5) Call back requirements.
 - 6) Familiarity of employee with work to be accomplished.
- C. When overtime is assigned on a rotating basis, it will be done in a fair and equitable manner. The employer also agrees not to assign overtime as a reward or punishment.
- D. Employees assigned to overtime work will be given as much advance notice of such assignment as possible.
- E. Overtime may be assigned when necessary to accomplish the employer's mission.
- F. Irregular or occasional overtime work which has been officially ordered and performed by the employee on a day when work was not scheduled for the employee, or which the employee is required to return to his/her place of employment, is deemed at least two hours in duration for the purpose of premium pay, either in money, or if the employee is equitable, compensatory time off, regardless of whether the employee is required to work the full two hours.
- G. Eligible employees whose rate of pay is below the maximum step of GS-10 will not be required to take compensatory time in lieu of payment when overtime is available or an overtime roster is established or is being established. Compensatory time should be utilized within 13 pay periods or it will revert to overtime after 13 pay periods. When possible, compensatory time will be scheduled and approved in advance. However, if approval or scheduling was not done in advance, for special or unforeseen requirements, this will not be a basis for denial or refusal of compensatory time.

SECTION 8: The Agency agrees that no officer of the union will normally be detailed from their worksite for more than 15 cumulative work days during each calendar year. Not more than one officer will normally be on detail at any one time. This is intended to speak to details as an employee and not as a union officer. (i.e. Details to act on behalf of the union are not included).

SECTION 9: Travel will normally be scheduled, to the maximum extent possible, during the basic workweek, relative to the schedules of each employee. If it is necessary for an employee to travel otherwise, the Employer will adhere to the provisions of the Federal Travel Regulations and the Fair Labor Standards Act.

ARTICLE 10 – FLEXIPLACE

SECTION 1: General

The employer supports a flexible workplace policy for employees who desire to work off-site for part of the pay period and whose work is appropriate to such an arrangement and where such an arrangement will benefit the government. It is the Agency's policy to provide management with the option to allow eligible employees to work at an alternative workplace for part of the workweek. Flexiplace is a program that permits employees to voluntarily work at approved locations remote to their official duty station (ODS).

- A. Intermittent Flexiplace - Intermittent flexiplace describes a work schedule that does not follow a regular weekly schedule. It can include any of the following situations:
 - 1) Short-term (one time work assignment)
 - 2) Periodic (occasional work assignment up to 3 days a month)
 - 3) Recurring (a regular work assignment occurring less than 4 days per month)
- B. Long Term Flexiplace - Long-term flexiplace describes a flexiplace work schedule that generally includes one (1) day or more a week at the flexiplace site.
- C. Official Duty Station – The city, town, county in which the employee normally works. This is the place where the employee's desk or the place where the employee normally performs his or her duties.
- D. Teleworker – An employee who works at an alternative work location (i.e. home, telecenter, or other satellite work location) on a regular and reoccurring schedule for a minimum of one day per pay period and with a written agreement.
- E. Teleworking – (Also known as flexiplace, flexible workplace, and telecommuting). Performance of official duties at an alternative work site (i.e. home, telecenter, or other satellite work location) which is not the employee's official duty work station.
- F. Telework Agreement – A written agreement, completed and signed by an employee and appropriate official(s) in his or her mission area/agency/staff office that outlines the terms and conditions of the telework (flexiplace) arrangement.

SECTION 2: Identifying Potential Positions

The employer will identify positions suitable for Flexiplace. Positions identified for Flexiplace depend on the specific nature of the work being performed, not the job series and title.

- A. The following guidelines will be used to identify appropriate work assignments for flexiplace:
 - 1) Tasks and work activities that are portable, do not depend on the employee being at the traditional work site, and are conducive to supervisory oversight at the alternative worksite.
 - 2) The work must be able to be completed away from the official duty station without adversely affecting the workload of other employees, office coverage, customer service, or other mission of the work unit.
- B. The types of work suitable for flexiplace depend on specific job function. However, jobs that require the following types of skills may be considered good candidates for flexiplace.
 - 1) Requires writing such as data analysis, reviewing voluminous documents, writing decisions or reports.
 - 2) Includes computer-oriented tasks such as programming, data entry, or word processing.
- C. Positions not generally eligible for telework are those positions involving tasks that are not suitable to be performed away from the traditional worksite, including tasks that:
 - 1) Require the employee to have daily face-to-face contact with the supervisor, colleagues, clients, or the-general public in order to perform his or her job effectively, which cannot otherwise be achieved via e-mail, telephone, fax, or similar electronic means
 - 2) Are part of trainee or probationary positions.

SECTION 3: Qualifications

Flexiplace is a management option rather than an employee benefit and does not change the terms and conditions of appointment. Even if the type of work being performed is suitable for approval of a flexiplace arrangement, the Employer must determine if the employee possesses the qualifications and

attributes necessary to participate in flexiplace. Such qualifications and attributes include or evidenced by, but not limited to, the following items:

- A. The employee must have achieved a "results achieved" (or fully successful) rating and there is no reasonable cause to believe this level of performance will drop. Management can waive this requirement on a case-by-case basis.
- B. Has not received any disciplinary or adverse action in the previous two (2) or three (3) years as appropriate.
- C. As a guide, the employee has demonstrated organizational skills, motivation, independence, self-discipline, dependability, is a self-starter requiring minimal supervision, and have the knowledge, skills, and abilities to work independently.
- D. The employee is willing to sign and abide by a written agreement which requires participation in training and evaluation sessions.
- E. The employee has satisfied adequate homework station requirements, including the availability of equipment and provisions for protecting the confidentiality of data.
- F. The employee is not currently on sick leave restriction.

SECTION 4: Application Procedure

- A. Employees desiring to participate in flexiplace must submit an application on a form supplied by the Employer. The Employer may deny an application to telecommute solely to maintain sufficient staff at the official duty station.
- B. If an application is approved, the employee will be required to sign a telecommuting agreement (Exhibit 1) that will include a trial period of not less than 30 days.

SECTION 5: Participation

- A. Flexiplace is voluntary. However, the Employer may require employees to work at the flexiplace site in case of emergency situations.
- B. If multiple employees are determined to be eligible to telecommute necessitating the denial or alteration of some requests, the employees will be given an opportunity to work out the conflict. If the employees are unable to resolve the conflict, their Service Computation Date (SCD) will be the "tie-breaker", with the earliest SCD receiving preference.
- C. Flexiplace employees are bound by the Employer's standards of conduct while in flexiplace status.

SECTION 6: Supervisor and Employee Agreement

The Flexiplace Work Agreement is the written document signed by the flexiplace employee and their supervisor, outlining details of the flexiplace program and the responsibilities of the employee and supervisor. The elements of this policy statement shall be incorporated into each Agreement.

- A. Before beginning off-site work, employees and supervisors must understand their responsibilities and the details of the program.
- B. The primary concern of supervisors is assuring the work of the unit is accomplished. The overall interests of the office must take precedence over working off-site. One person's off-site work should not adversely affect the performance of other employees or put a burden on staff remaining in the office. Not only should an equitable distribution of workload be maintained, but also methods should be instituted to ensure that office employees do not have to handle the flexiplace employee's work.
- C. Management approval will be at the first line supervisor's level with second line supervisory concurrence.
- D. Employee participation in the flexiplace program may be contingent upon available financial resources.
- E. Duration - flexiplace agreements can be for any period of time up to and including one year. The agreement should be re-signed if the agreement is extended past twelve months.

SECTION 7: Administration

- A. Work Schedule - Rules concerning work schedules, overtime, pay, leave, core hours and other personnel issues apply to flexiplace employees as they do to on-site employees.

- B. The Flexiplace Work Agreement documents the initial work schedule and should be updated to reflect changes in work schedules. In addition to regularly scheduled on-site days, employees are responsible for attending meetings or other on-site events; reasonable notice, generally not less than 24-hours, of such events will be given to employees who are not scheduled to be in the office on those days.
- C. For a long term flexiplace agreement as defined in Section 1, the initial agreement will require the employee to work at the official duty station a minimum of two (2) days per workweek. After the initial flexiplace agreement, at the discretion of the Supervisor, this may be waived on a case-by-case basis.
- D. Hours of Work. Pursuant to Article 9 (Hours of Duty), teleworking employees can participate in the variable week schedule while at the remote site. Supervisors will continue to certify time and attendance for flexiplace employees. Employees are required to maintain T&A logs for periods covered at the Flexiplace site. The employee is responsible for submitting their T&A log in accordance with office practice, unless it is beyond the employee's control.

SECTION 8: Position Descriptions and Performance Standards

- A. Established position descriptions will apply to flexiplace employees. Performance standards for flexiplace employees will be results-oriented and will describe the quantity and quality of expected work products and the method of evaluation. Generally, the same performance standards will apply to both flexiplace employees and on-site employees who perform the same tasks, with adjustments for unique circumstances encountered.
- B. In order to evaluate job performance as well as to certify time and attendance, supervisors will establish clearly defined work assignments and expectations. Work performance should be evaluated according to:
 - 1) Existing quantity and quality expectations.
 - 2) Existing expectations monitored through periodic progress reports by the telecommuter.
 - 3) Other appropriate measures to assure the employee is accomplishing the assigned tasks within the established job position.

SECTION 9: Temporary Changes to Flexiplace/Teleworking Agreements.

The Employer has the right to direct employees to report to their ODS due to special circumstances, including, but not limited to, office assignments, meetings, and/or training. If due to equipment and/or service failure, the employee may be required to report to the ODS. If circumstances warrant, appropriate arrangements will be made between the Employer and the employee in determining travel and hours of work.

SECTION 10: Level of Access

As a minimum level of accessibility, teleworking employees are expected to be as available to the Employer, co-workers and customers by telephone, E-mail, voice mail or other communications media during their scheduled daily tour of duty as when working at the ODS. The Employer has the right to publish, or otherwise make available, the employee's remote site business telephone/fax number and e-mail address. Publication will be limited to official listings wherein other employee information is typically made available. The Employer may call the employee at anytime their electronic sign-in sheet shows them to be on duty. The Employer may, on occasion, visit the employee at the remote work site. Such unannounced visits will occur while the employee is on duty.

SECTION 11: Flexiplace Site Provisions

- A. Subject to the Employer's right to determine its budget (reference 5 USC 7106), the Employer will make a good faith effort to provide/install equipment, supplies and services required for employees to participate in flexiplace and to perform their duties at the remote work site. The Employer retains ownership and control of all such property. The Employer will not provide office furnishings such as, but not limited to; desks, chairs, bookcases, file cabinets, credenzas, etc. Employees must ensure that government-owned property is used only for authorized purposes. The employee is responsible for requesting Employer-owned or furnished equipment, supplies, and services. Within ten workdays of completing or terminating a flexiplace/teleworking agreement, or prior to separation from the

agency, the employee must return all Employer equipment and request termination of telephone service. Failure to do so may subject the employee to disciplinary action and the employee will be responsible for any service or disconnect charges from the date flexiplace ended.

- B. As circumstances change and it becomes economically feasible and appropriate, the Agency may provide additional assistance in maintaining the flexiplace site.
- C. With Employer approval, employees may use their own compatible equipment consistent with Employer network requirements and the availability of technical support and services. In addition to being compatible, employee-owned equipment must be of a like or better quality than the equipment in use by the general employee population at the ODS. The servicing and maintenance of employee-owned equipment is the responsibility of the employee. Employee-owned software used for official business must be of the same make and version as that in use by the Employer at the ODS.
- D. The employee must provide adequate workspace, lighting, residential telephone service, power, and smoke alarms. The employee will be required to identify the specific location of the work area at the remote work site and self-certify as to the adequacy and safety of the remote work site.
- E. Employees must comply with all security measures and disclosure provisions, including password protection and data encryption so that the Privacy Act or other security standards are not compromised. Employees may not remove, or transfer by any means, sensitive material from their ODS to the remote work site without prior approval.
- F. Employees must protect all government records and data against unauthorized disclosure, access, mutilation, obliteration and destruction. E-mail sent to the ODS with attachments must contain the following statement, "This e-mail was generated from a remote work site. Attachments must be scanned for viruses prior to opening." Computer files transferred from the remote work site to the ODS by any other method must be scanned for viruses.
- G. Employees must ensure that government provided equipment and property is used only for authorized purposes. Reasonable care should be used in operating all equipment. The servicing and maintenance of government owned equipment is the responsibility of the Employer.
- H. The flexiplace employee's work site must meet acceptable standards for the safety of the employee and the security of data and any Government loaned equipment. A self-certification safety inspection form (Exhibit 2) or on-site inspection (normally within 24 hours notice) may be used to meet this requirement.
- I. It is the employee's responsibility to determine, and comply with, any local zoning restrictions. Employee is responsible for any costs of working at home that arise from local zoning requirements, insurance coverages, business use permits and/or variances.

SECTION 12: Miscellaneous Conditions

- A. **Dependent Care.** Flexiplace is not a substitute for day care. Flexiplace employees may not have a dependent in the home during work hours unless an in-home care provider is present. The employee will make arrangements for dependent care, as necessary, to ensure an uninterrupted tour of duty. Older children, age 12 and older, may be in the home during duty hours, as long as care is not required by the employee.
- B. **Personal Expenses.** The Employer will not be responsible for personal operating costs, site maintenance, or any other incidental costs (e.g., utilities) associated with the use of the remote work site, except as provide for in this agreement. The employee does not relinquish any entitlement to reimbursement for appropriately authorized expenses incurred while conducting business for the Employer as provided for by law and regulations.
- C. **Long-distance Telephone Calls.** Teleworking employees should use a government telephone card when making official long-distance telephone calls from the remote work site. Use of the card for other than official purposes may result in disciplinary action and termination of the teleworking agreement. In an emergency (e.g. loss of card), employees may be reimbursed for business calls when such calls are required to complete a work assignment.
- D. **Liability for Damages -** The Employer will not be held liable for damages to the employee's personal or real property during the performance of official duties or while using Employer equipment at the alternative work site, except to the extent the Employer is held liable under the Federal Tort Claims Act or the Military Personnel and Civilian Employees Claim Act.

E. Workers' Compensation Act - Flexiplace employees are covered by the Federal Employees Compensation Act and may qualify for payment for on-the-job injury or occupational illness.

F. Emergencies/Administrative Leave/Early Dismissal

- 1) If the remote work site is affected by an emergency that prevents the employee from working, but the ODS is not, the employee may be required to report to the ODS or to request leave. At the discretion of the Employer, the Employee may be granted an excused absence depending on the circumstances.
- 2) If both the ODS and remote work site are affected by an emergency that prevents the employee from working, or employees are otherwise dismissed early, the employee may, at the discretion of the Employer, be granted an excused absence.

SECTION 12: Duration

An employee's involvement in the flexiplace program is voluntary and may be discontinued by the employee or the supervisor at any time with appropriate notice (normally 2 weeks). Management may remove an employee from the program if performance declines, the employee violates the terms of the flexiplace agreement or the program no longer benefits the organization's needs, without advance notice.

ARTICLE 11 - JOB SHARING

SECTION 1: Purpose

The purpose of this part is to establish guidelines on job sharing in the Farm Service Agency. Job sharing is filling of one position with two part-time employees. Generally, a job-sharing team is two employees at the same grade level, but other arrangements are possible. Job sharers are part time employees and are subject to personnel policies on that basis.

SECTION 2: Policy.

It is the policy of the Farm Service Agency to encourage employees who want extra time to care for their families, pursue additional education, accommodate health needs, or phase into retirement to seek flexibility in their work schedules by participating in job sharing.

SECTION 3: Jobs Eligible for Job Sharing.

There is no definite list of jobs "suitable" for job sharing, and no law or regulation limits part time or job sharing to specific jobs or grade levels. Any nonsupervisory job may be filled by a part-time employee or by a team of job sharers when the arrangement meets the needs of the agency and the employee(s).

SECTION 4: Guidelines for Implementing Job Sharing.

- A. A proposal can come from a full-time employee who wants to reduce work hours, from a team of job sharers, or from a Supervisor who wants to consider filling a vacancy with job sharers. When an employee's request for part-time cannot be accommodated because of the need for full-time coverage, job sharing may well be an option.
- B. Any job sharing arrangement is subject to Management approval based on workload and mission requirements.
- C. The approval of a job sharing arrangement will not have an adverse impact on the agency's operations.
- D. Employees participating in the job-sharing program who wish to return to full-time employment must apply and compete for a vacant full-time position in accordance with the FSA Merit Promotion Plan, or may be reassigned to a vacant position with the same career potential.
- E. In the event the employer deems it necessary to propose termination of an employees participation in Job Sharing, the affected employee will be notified in writing. The notification for the termination will include specific reasons and instances of adverse impact on Agency operations that clearly establish why Job Sharing, should no longer be appropriate. Note: RIF procedures are not appropriate for separating a job sharer when the agency wishes to replace the two job-sharers with on full-time employee.
- F. If one partner is unable to maintain the agreed-upon schedule, goes on extended leave, resigns, or takes another hob, the remaining partner would be expected to work full-time until the other job sharer is replaced
- G. When it is necessary to end a particular job-sharing arrangement, the agency may reassign one or both of the job sharers to other full-time positions.
- H. 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, recordkeeping, reduction in force, adverse actions, grievances, and personnel ceilings.

SECTION 5: Position Descriptions.

- A. When two job sharers at the same grade level are jointly responsible for all the duties and responsibilities of the full-time position, there is no need to restructure the position. Each team member should have a copy of the original position description to which a statement has been attached to show that the incumbent is a job sharer jointly responsible for carrying out all the duties and responsibilities of the position. When the job sharers will be individually responsible only for a portion of the job, or when the job sharers are at different grade levels, separate position descriptions are required to reflect the actual duties and at different grade levels, separate position descriptions

are required to reflect the actual duties and responsibilities of each employee. Each job sharer must have a position description that accurately reflects his or her duties and responsibilities.

- B. The decision on whether job sharers should be jointly responsible for the entire position or only for separate functions depends on the job and the abilities of the job sharing team. To determine the arrangement for a particular job, the Supervisor (with assistance from the second level supervisor) should examine the position description and decide which tasks will be shared; i.e. handled by whichever team member is on duty, and which will be assigned to a specific individual, based on skills and experience. The Union will be provided an opportunity to provide input into this arrangement.

SECTION 6: Work Schedules.

Specific work schedules depend on the nature of the job and the needs of the office and the job-sharing team. Almost any reasonable arrangement is possible if it meets the needs of the Supervisor and the job sharers. Scheduling should take advantage of the fact that two people rather than one are filling the job. These possibilities include overlapping time, split shifts, or working in different locations at the same time. Work schedules for job sharer can be from 16 to 32 hours per week and can be varied in the same way as those of other part-time employees. The amount of scheduled overlap time depends on the needs of the particular position.

SECTION 7: Performance Standards and Evaluation.

Each team member of a job-sharing team must have his or her own performance standards. These will be identical if the job sharers are jointly responsible for the entire position. Each job sharer must be evaluated separately although the evaluation will often be based on work to which both have contributed.

SECTION 8: Space and Equipment.

In some offices, the availability of space and equipment will be limited. Job sharers who use the same desk, telephone, computer, etc., will need to agree on the basics so they will not lose time searching for or rearranging items.

SECTION 9: Communications.

For job sharing to be successful, everyone with whom the job sharers have contact must be able to assume that any information given to one team member will reach the other. In other words, Supervisors, coworkers, and clients expect to communicate with the "position" via the person on duty at the time. The job sharers must have a workable communication system that serves the purpose without detracting from their ability to get the work done.

ARTICLE 12 - EMPLOYEE TRAINING AND DEVELOPMENT

SECTION 1: Any training for employees adversely affected by the impact of realignment of work forces or technological change will be provided by the Employer.

SECTION 2: The Employer and the Union agree to meet when necessary at mutually agreed times and places for the purpose of discussing matters relating to training involving programs available and opportunities that may be pursued by members of the unit. The Employer will notify the employee and union of those positions requiring a career development plan.

SECTION 3: The Employer and the Union recognize that training and development of employees is essential to efficient operation. The union has the right to discuss choices of subject matter, areas for training, selection of employees and assignment of training priorities.

SECTION 4: The Employer and the Union recognize that each employee is responsible for applying diligent effort, time and initiative in increasing their potential value through self-development and training. Therefore, the Union agrees to encourage all employees to take advantage of available and recognized training and educational opportunities identified and offered to improve their current job performance.

SECTION 5: Payment of job related training courses and related fees shall be consistent and in accordance with law and regulation.

SECTION 6: Training on new equipment will be provided as necessary. Training costs will be consistent with law, regulation, and availability of funds. Training will normally be held at the nearest facility offering such new equipment training.

SECTION 7: The Employer will make available to the union and employees any announcements or publications relating to technical or administrative training as the Employer receives such announcements or publications.

ARTICLE 13 - GRIEVANCE PROCEDURE

SECTION 1: Purpose.

The purpose of this Article is to provide for a mutually accepted method for the prompt and equitable settlement of grievances. Most grievances arise from misunderstanding or disputes, which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level. Every effort will be made by the parties to settle grievances at the lowest possible level. Inasmuch as dissatisfactions and grievances arise occasionally among people in any work situation, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, his/her performance, or his/her loyalty or desirability to the organization. Similarly, the occurrence of a grievance will not be construed as reflecting unfavorably on the quality of supervision or general management of the organization.

SECTION 2: Scope.

Grievance means of complaint:

- A. By any employee concerning any matter relating to the employment of the employee;
- B. By the Union concerning any matter relating to employment of any employee;
- C. By any employee, the union, or the Employer concerning:
 - 1) The effect or interpretation or a claim of breach of a collective bargaining agreement;
 - 2) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulations affecting conditions of employment.
- D. Except that it shall not include a grievance concerning:
 - 1) Any claimed violation relating to prohibited political activities.
 - 2) Retirement, life insurance, or health insurance.
 - 3) A suspension or removal under Section 7532, Title 5 U.S.C.
 - 4) Any examination, certification or appointment.
 - 5) The classification of any position which does not result in the reduction in grade or pay of an employee.
 - 6) Termination of probationary employees.
 - 7) Non selection for promotion from a group of properly ranked and certified candidates.

SECTION 3: This negotiated procedure shall be the exclusive administrative procedure available to the Employer, the Union and the employees in the bargaining unit for resolving such grievances except as provided in Section 4 of this Article. It is understood that the neither the Union nor Management will waive any time frames pursuant to the grievance procedure in utilizing the Alternative Dispute Resolution process.

SECTION 4: Appeal and Grievance Options.

An employee who has been adversely affected by a removal for cause, a reduction in grade based on unacceptable performance, an adverse action or discrimination, may at their option raise the matter under a statutory appellate procedure or the negotiated grievance procedure, but not both. For the purposes of this section and pursuant to Section 7121(e)(1) of the Act, an employee shall be deemed to have exercised their option under this section when the employee files a timely notice of appeal under the appellate procedure or files a timely grievance in writing under the negotiated grievance procedure.

SECTION 5: Question of Grievability.

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 Employer and the Union agree to raise any question of grievability or arbitrability of a grievance prior to the time limit for the written answer in Step 2 of this procedure. If it is necessary to obtain an Interpretation of Agency Policy or Regulation which relates to the question of grievability or arbitrability, the time limits will remain in place until a position is obtained by the agency or the union. This extension will not exceed 20 days. All disputes of grievability or arbitrability shall be referred to arbitration as a threshold issue in the related grievance.

SECTION 6: Grievance Procedures.

- Step 1: Any grievance shall first be taken up orally or in writing by the concerned employee or union representative with the appropriate first line supervisor in an attempt to settle the matter. Grievances must be presented within twenty (20) calendar days from the date the employee or union became aware of the grievance. The union representative must be present if the employee so desires. However, if an employee(s) presents a grievance directly to the Employer for adjustment consistent with the terms of the agreement, the local may have an observer present. The Employer will respond within 20 calendar days from the date of the meeting.
- Step 2: If the grievance is not settled at Step 1, the union representative and/or the employee (grievant) may, within 20 calendar days, of the step 1 decision, forward the grievance to the State Executive Director (SED), or their designee, for further consideration. The (SED) or their designee will review the grievance, consult with the first line supervisor and the union representative and give the employee and union representative a written answer within (30) calendar days after receipt of the grievance. Failure to meet the response time at the second step of the grievance procedure will result in an unfavorable ruling for the party missing the time.
- Step 3: If the grievance is not satisfactorily settled at Step 2, the union or the Employer may refer the matter to Arbitration. All time limits in this article may be extended by mutual consent.

SECTION 7: Waiving Provisions.

The parties may mutually agree to waive any of the grievance steps or to extend the timelines at any step. Disciplinary or adverse actions, where a proposing and a deciding official have already heard the employee's position, may begin at Step 2. If the time limits at any step are not waived by mutual consent, than a grievant not receiving a timely decision may elevate the grievance to the next step. Any grievance not taken to the next step in a timely manner or extended by mutual agreement will be considered closed.

SECTION 8: Mediation.

If the parties fail to settle any grievance at Step 2, the matter may be submitted to mediation upon written request by either the Employer or the Union within fifteen (15) calendar days after receipt of the Step 2 decision. The mediator will attempt to help the parties settle the matter in a mutually satisfactory way. Rules of evidence will not apply, and formal examination and reexamination of witnesses will not be used. All participants will be encouraged to ask and offer information as no record of the proceedings will be made. If a settlement is not reached, the mediator will be asked to provide an immediate opinion, based on this collective bargaining agreement, as to how the grievance would be decided by an arbitrator. Mediators may be from the Federal Mediation and Conciliation Service (FMCS), if available, or any individual mutually acceptable to both parties. If no mediator is available that meets these criteria, or if there is cost that either of the parties is unwilling to bear, then the matter may be taken directly to arbitration.

SECTION 9: Arbitration.

If the Union and the Employer are unable to settle any grievance through mediation, either party may within thirty (30) calendar days invoke arbitration. The invoking party will immediately notify the other party. (The Union will notify the State Executive Director or their designee or, the Employer will notify the Union Vice President or their designee.)

- A. The invoking party will request the FMCS to provide a list of seven (7) impartial persons qualified to act as arbitrator. The request to FMCS will include a brief statement of the issue(s) involved in the dispute. If the parties cannot agree to a joint statement, each party may separately submit a statement. 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 issues to be heard. Any cost for the list will be shared equally by the Employer and the union.
- B. Within seven (7) days of receipt of the list, the invoking party will contact the other party to choose an arbitrator. If they cannot mutually agree on one name from the list, the invoking party will strike

one name first and then each party will alternately strike one name from the list until only one name remains. The remaining name on the list shall be the duly selected arbitrator. The invoking party shall immediately notify FMCS of the selection. If either party fails to participate in the striking process within 30 days of receipt of the list, the other party will make the arbitral selection. In the event neither party complies with the aforementioned provision, the grievance is rendered moot.

- C. By mutual consent, arbitration may be conducted as oral proceedings with no verbatim transcript and no filing of briefs.
- D. Arbitration hearings will be held at the location of the grievant or as mutually agreed to by the parties.
- E. The parties will exchange lists of witnesses to be called, along with a listing of facts and/or evidence that may be stipulated to by both parties, at least fifteen (15) days prior to the opening of the hearing. If the parties cannot agree to a slate of witnesses, it shall be the sole discretion of the arbitrator to determine who may testify. Witnesses will be allowed a reasonable amount of official time to prepare their testimony and gather required facts/records, etc.
- F. The grievant, the Union representative(s) and the employee witnesses will be excused from their regular duties to the extent necessary to prepare and participate in the hearing. These individuals shall be considered in a duty status.
- G. The arbitrator shall be requested to render and serve their written decision within 30 days after the conclusion of the hearing.
- H. The fees and expenses of the arbitrator shall be borne as follows:
 - 1) The losing party shall bear fifty (50%) percent of the cost of arbitration.
 - 2) The prevailing party shall bear fifty (50%) of the cost of arbitration.
- I. The arbitrator's award shall be binding on the parties. However, either party may file exception to the award with the FLRA under regulations prescribed by the Authority.
- J. If the arbitrator fails to render a decision on arbitrability issues prior to the hearing, the arbitrator shall hear arguments regarding both the arbitrability and the merits of the cases at the same hearing.

ARTICLE 14 - CONTRACTING OUT

SECTION 1: The Employer agrees to consult openly and fully with the Union regarding any proposed action taken under OMB Circular A-76 to study or contract out existing functions which have bargaining unit positions.

SECTION 2: The Employer will provide to the Union, upon request, relevant and pertinent information concerning all cost studies (for actions covered under Section 1), specifically: the invitation for bid, request for quotation or request for proposal; abstract of bids; correspondence from Department of Labor regarding certification of a wage rate; the performance work statement; the "milestone" chart or similar document setting forth the estimated dates for the contracting out process; all changes to performance work statements; all bidder questions and Employer answers related to the performance work statement. In addition, the Employer agrees to provide to the Union, upon written request, other information concerning its A-76 contracting out activities that is normally maintained, readily available, not prohibited by law, and which does not constitute guidance, advice, counsel, or training provided for Management officials or supervisors. Information which will be provided does not extend to information which is classified, proprietary information, or procurement sensitive information, the release of which will compromise the procurement process.

SECTION 3: The Union has the right to negotiate on appropriate arrangements, not already covered by agreements between the Union and the Employer, for Employees adversely affected by contracting out. This is not to be construed as affecting the Employer's rights to make determinations with respect to contracting out and to determine the personnel by which the Employer's operations will be conducted.

SECTION 4: The Union will be represented by one of its officials (President, Vice President, Chief or their designee) on the Commercial Activities Working Group. The Employer will afford the Union the opportunity to be represented on all the other committees and steering groups (except the Executive Committee and the Source Selection Committee) involved in the conduct of any portion of an A-76 cost study, subject to the understanding certain committees and steering group receive and be bound not to release sensitive procurement information. The parties acknowledge the importance of continuity in membership on committees and working groups. The Union representative named to each group will have the authority to speak for the Union. The Employer will afford the Union the opportunity to participate in any "walk through" of bidders of a function undergoing cost study. Committee recommendations forwarded to and approved by the Executive Committee will remain negotiable at the election of the Union, provided the matter is negotiable under current statute or case law.

SECTION 5: Periodic briefings will be held between the Employer and the Union to provide the Union with information pursuant to OMB Circular A-76 and this Agreement, on matters which may adversely affect bargaining unit Employees. Briefings will be held with adversely affected Employees for the purpose of providing information concerning contracting out. The Union will be afforded the opportunity to be present at all such briefings.

ARTICLE 15 - POSITION CLASSIFICATION

SECTION 1: The parties agree to the principle of equal pay for substantially equal work within the bargaining unit. The Employer agrees to maintain job descriptions which accurately reflect the major duties and responsibilities assigned to bargaining unit members on a regular and recurring basis.

SECTION 2: Job descriptions of employees who are performing identical duties, at the same level of responsibility, with the same degree of supervision under the same supervisor, and with all other evaluation factors identical will, to the extent practical, be uniform. Each employee will receive a copy of their job description upon appointment, position change, or a change in the job description. Each employee is responsible for retaining a copy of their current job description.

SECTION 3: When an employee believes a significant assigned major duty is not included in their position description record, the employee should discuss the duty with their supervisor for the purpose of determining whether the duty will continue to be performed and officially recorded on their job description or, if improperly assigned, will not be required to be performed by that employee. When having such discussion, the employee will provide the supervisor with sufficient information to enable the supervisor to make such a determination. This is not to be construed as permitting an employee to refuse to perform tasks which are assigned by the supervisor.

SECTION 4: It is understood that the phrase performs other duties as assigned which appears in employee job descriptions is not intended to mean major duties which are performed on a regular or recurring basis. If an employee continues to be required to perform significant duties which are not recorded in their job description, and their supervisor does not initiate action to have the duties either assigned elsewhere or recorded on the employees job description, the employee may seek resolution through the negotiated grievance procedure

SECTION 5: The Employer agrees to notify the Union Representative when there is going to be any classification surveys affecting employees in the unit. When requested by the Union Representative, the Employer agrees to discuss with the Union, survey procedure, sampling techniques, and survey schedules within 30 days of receipt of request. When received by the State Executive Director, all results of classification surveys are to be provided to the Union Representative within a reasonable period of time. The Union Representative may attend formal survey openings and closings. The employee will be responsible for notifying the Union representative when there is going to be a job (desk) audit. Upon completion of this process, the employee and supervisor are notified of the results and any corrective action if necessary. The employee will be responsible for notifying the Union representative of the results.

ARTICLE 16 - REDUCTION IN FORCE

SECTION 1: Purpose.

This article is intended to establish and describe procedures the Employer will take in the event of a reduction-in-force, reorganization, or a transfer of function, as defined in this document. It is also intended to protect the interests of employees while allowing the Employer to exercise its rights and duties in carrying out the mission of the agency.

SECTION 2: Application.

The Employer agrees that the application of this agreement, and laws and regulations relating to any matter in this agreement, shall be fair and equitable. Where the Employer is left discretion in choosing a course of action in any matter covered in this agreement, the union will be notified of the course of action and given the opportunity to discuss it.

SECTION 3: When a decision has been made to take a reduction in force action, the Employer will keep the Union and the affected employees informed. The Employer agrees to notify the Union of the reasons proposed, number and types of positions affected, approximate effective date of the action, and to provide an opportunity for the Union to present its views and ideas.

SECTION 4: An employee affected by a RIF Action and/or their representatives, designated in writing, may examine the retention registers and other pertinent information relative to the action after offers of position or separation notices are received.

SECTION 5: All reduction in force actions will be carried out in strict compliance with laws and regulations, and relevant programs such as Career Transition Assistance Program and Interagency Career Transition Assistance Program. (CTAP/ICTAP)

SECTION 6: Written notification to the Union of any reduction in force and/or transfer of function shall be made at the earliest possible date prior to general notices to employees. The notification will include:

1. The reason for the action to be taken;
2. The approximate number of employees who may be affected initially;
3. The types of positions anticipated to be affected initially; and,
4. Anticipated effective date that action will be taken.

The Agency will provide the Union with documentation requested by the Union in writing. The information provided would be that governed under 7114(b)(4) of the statute.

SECTION 7: Notice to Employees

- A. The Agency will give an advance general notice of 150 days to employees who may be affected by a reduction in force action.
- B. The Agency will provide a specific notice of 90 days to individual employees who will be affected by a reduction in force action.

SECTION 8: Competitive Areas

Competitive areas will be assigned by the Agency in accordance with regulations. Notification to the union of the competitive areas shall be made at the earliest possible date in order to provide opportunity for discussion. The Agency will temporarily suspend the filling of all Bargaining Unit vacancies in the competitive area of employees who will be affected by a reduction in force not more than 60 days prior to issuing specific RIF notices.

SECTION 9: Filling Positions

- A. The Agency will use vacancies to the maximum extent possible to place employees who would otherwise be separated in a reduction in force.

- B. RIF-affected employees will be given first consideration for reassignment to vacant positions. Employees who volunteer for reassignment within the state but outside their commuting area may be expected to pay their relocation costs.
- C. The Agency will establish a re-employment priority list of employees separated because of the RIF. Employees on this list will be offered positions, for which they qualify, at or below the grade from which separated, prior to the Agency seeking applicants from outside of the Agency.
- D. The Agency will take all reasonable steps to make lateral reassignments to vacant positions and to waive non-mandatory qualifications to the maximum extent feasible to facilitate the placement of affected employees at the same or lower grade.

SECTION 10:

- A. Bargaining unit employees if downgraded through no fault of their own, will be entitled to pay and grade retention in accordance with 5 CFR 536.
- B. Employees affected by RIF, and eligible for relocation entitlements, will be allowed to make one house-hunting trip at Agency expense in compliance with relocation regulations.

ARTICLE 17 - DISCIPLINARY AND ADVERSE ACTIONS

SECTION 1:

- A. A disciplinary action for the purposes of the article is defined as a formal written reprimand or a suspension from employment for fourteen (14) calendar days or less. The agency agrees to present disciplinary actions within a reasonable period of time of the incident taking into consideration the possible need for a formal, detailed investigation.
- B. Bargaining unit employees are subject to disciplinary action for misconduct, which is related to their employment. The provisions of the article do not apply to emergency suspensions as defined by law.

SECTION 2: The union, if requested by an employee, will be given an opportunity to be present at any examination of an employee by a supervisor in connection with an investigation, if the employee reasonably believes that such examination may result in disciplinary action against the employee. Although the Employer will accommodate an employee's request to have a union official present by giving the employee an opportunity to contact a union official, such examination will normally not be delayed beyond seventy-two (72) hours, exclusive of weekends and holidays, from the date/time the examination was initially scheduled to be held.

SECTION 3: When the Employer proposes to suspend an employee for fourteen (14) calendar days or less, the following procedures will apply:

- A. The Employer will provide the employee with at least fifteen (15) calendar days advance written notice. The notice will state the reasons for the proposed disciplinary action, with sufficient detail to enable the employee to understand the reasons for the action.
- B. The employee may respond orally and/or in writing within fifteen (15) calendar days from receipt of the notice, and may furnish affidavits and other documentary evidence in support of his/her response. The employee may be granted a fifteen (15) calendar day extension of the reply period, if the employee:
 - 1) Requests such an extension in writing prior to the expiration of the initial fifteen (15) calendar day response period, and:
 - 2) Provides demonstrated and valid reasons, acceptable to the Employer, for requiring such an extension.
- C. When making a response, an employee is entitled to be represented by a lawyer or other representative.
- D. After receipt of the written and/or oral response, or the termination of the notice period, whichever comes first, the Employer will issue a written decision to the employee which shall include a statement of the employee's right to grieve as provided for in this agreement. Suspensions will be based on reasons specified in the advance notice.

SECTION 5: If an employee is to be served with a warrant or subpoena, it will be done in private without the knowledge of other employees to the extent it is controllable by the Agency.

SECTION 6: The reasons and material on which the notice is based, including statements of witnesses, documents, and investigative reports or extracts therefrom, shall be assembled and made available to the appellant and his/her representative for their review as allowed by law. Any material not disclosed will not be used by the Employer to support their reasons in the notice.

SECTION 7: Adverse Actions

An adverse action for the purpose of the article is defined as a reduction in grade, or pay removal, suspension for more than 14 days, furlough without pay for thirty (30) days or less, or emergency suspension; which is imposed by the Employer to promote the efficiency of the service when an employee's action is alleged not to conform to an acceptable standard of conduct when such conduct is directly related to their employment. The agency agrees to present all adverse actions to the employee within a reasonable period of time, taking into consideration the possible need for a formal, detailed investigation.

SECTION 8: The employee against whom an adverse action is proposed is entitled to thirty (30) calendar days advance written notice stating any and all reasons, specifically and in detail, for the proposed action. The employee will provide the Union representative a copy of the written notification. The appellant will be in a duty status during the notice period unless the crime provision is invoked. When circumstances are such that the retention of the appellant in a duty status may result in damage to the Employers property or may be detrimental to the interest of the Employer or employees of the Employer, they may be assigned to other duties or placed on leave.

SECTION 9: The reasons and material on which the notice is based, including statements or witnesses, documents, and investigative reports or extracts therefrom, shall be assembled and made available to the appellant and their representative for review. Any material not disclosed will not be used by the Employer to support their reasons in the notice.

SECTION 10: The appellant will be given up to twenty (20) calendar days from receipt of the adverse action to reply orally or in writing. Upon request, with the approval of the Employer, an extension may be granted when justified. When approved by the supervisor, the employee may be granted official time to prepare his/her reply.

SECTION 11: An employee against whom an adverse action is taken under this article is entitled to appeal through statutory procedures or through the negotiated grievance procedure of this agreement, but not both.

SECTION 12: If, upon appeal, the action is not sustained and the Merit Systems Protection Board (MSPB) directs the Employer to reinstate and make whole the appellant, the Employer will comply with the MSPB decision within thirty (30) days from the decision.

SECTION 13: Letters of reprimand will be maintained in the employee's Official Personnel File (OPF) for a period not to exceed two (2) years. These disciplines may only be considered during subsequent disciplinary actions for the time of their maintenance in the above file. Suspension actions will be considered during subsequent disciplinary actions only in the context of applicable law and regulations.

ARTICLE 18 - OFFICIAL TIME

SECTION 1: Union Officials who are currently employees of this bargaining unit shall be authorized official time for representational duties that will not exceed 25% of the employee's duty time. Exclusive of this time would be official time for bargaining, arbitration, and participation in the third party appeals process. Such time shall be granted without loss of pay, and is considered hours of work.

SECTION 2: Official Time will be requested by Union representatives as soon as a need for official time is recognized using Exhibit 3 attached to this agreement. The Supervisor will act on the request upon receipt. Union representatives will report the time spent carrying out Union responsibilities to his/her supervisor. The form entitled Requests for Official Time (see Exhibit 3) will be used to request and report official time and must be in sufficient detail to allow completion of the individual's Time and Attendance report.

SECTION 3: An Employer agrees to allow each union representative reasonable amount of official time, but not less than 80 hours per person, to attend training sessions of a mutual benefit to the Employer and the union during the period of time that the individual is in a duty status, provided that the subject matter of the training is of mutual concern to the Employer and the employee is in the capacity of a union official or representative. The Union will be responsible for and pay any applicable travel and per diem expenses associated with the traveling to or attending the training. Requests to be excused will be submitted to the Employer (Administrative Officer or Employer's designated representative) as far in advance as possible. Requests will include a copy of the agenda or program and a description of the training for which the excuse is requested. It is understood that such official time will only be granted if it does not interfere with the accomplishment of the mission, not to include routine tasks and daily duties and is not considered internal union business.

SECTION 4: The parties agree that supervisors will normally not interfere with Union Officials performing official duties on official time. This includes and is not limited to calling Union Officials at home, on personal cell phones, while in meetings, or away at approved training.

ARTICLE 19 - HEALTH AND SAFETY

SECTION 1: The employer shall make every reasonable effort to provide and maintain safe working conditions and industrial health protection for all employees, using recognized safety precautions as a guide. The Union and the employer shall cooperate by instructing and encouraging all members of the unit to observe safety precautions, such as OSHA regulations, and to work in a safe manner.

SECTION 2: It is recognized that each employee has a primary responsibility for his/her safety and an obligation to know and observe safety rules and precautions as a measure of protection for him/herself and others. In the course of performing their normally assigned work, employees will be alert to observe unsafe conditions. When unsanitary, unsafe, or unhealthy conditions are observed, it is the employee's responsibility to report them at once to his/her immediate supervisors. It is the employer's responsibility to take necessary action as soon as possible.

SECTION 3: Employees who sustain an injury while on the job, no matter how slight, will immediately report to the supervisor. They will also notify their supervisor in writing, preferable before leaving the work site on the shift during which the injury occurred but not later than 48 hours afterward. Such report shall be made on Office of Worker's Compensation Programs (OWCP) Form CA-1 or Form CA-2, as appropriate. If the injury is of a nature which requires immediate treatment at an outside medical facility, transportation to the hospital will be provided by the Employer at the time of injury. Further, the applicable provisions of the Federal Employees' Compensation Act as administered by the OWCP, U.S. Department of Labor, will be made available to the employee. The immediate supervisor or designee will assist the employee at his/her request in filing the necessary forms.

SECTION 4: Medical records will be disclosed only upon an employees written permission unless it involves a mental or other condition of such a nature that a prudent physician would hesitate to inform a person suffering from it and its exact nature and probable outcome, in which case it will not be disclosed.

SECTION 5: An employee injured while in a duty status, through no fault of their own, is entitled to first aid and medical care for the injury; this includes hospital care when needed. Medical services will be provided IAW applicable regulations. Each office shall have posted on the bulletin board the telephone number of the local police department and rescue squad.

SECTION 6: It is further understood and agreed that, when the employer requires the use of , and/or wearing of, special equipment, these specified items shall be furnished to employees at no cost and shall be used for official purposes only. The employer also agrees to provide first aid kits and insure that fire extinguishers are provided.

SECTION 7: The employer agrees to assure the abatement of working conditions which have been determined by the employer, or appropriate health and safety official, to be unsafe or unhealthy as soon as possible. If the employer cannot promptly abate the unsafe or unhealthy condition, the employer agrees to develop an abatement plan for the unsafe/unhealthy working condition and inform employees, who are affected by the unsafe or unhealthy condition, of the provisions of the plan. The employer agrees that no employee will be subject to restraint, interference, coercion, discrimination or reprisal for reporting unsafe or unhealthy working conditions or for participating in the employers' wellness program activities.

SECTION 8: If an employee is required to perform tasks that the employee reasonably believes constitute a hazardous or life threatening situation, the employee has the right to refuse such an assignment. It is clearly understood that the employee acts at their own peril in refusing an assignment and will be subject to disciplinary action if, in fact, their belief was wrong.

SECTION 9: A safety suggestion made by an employee, which is not acted upon or responded to in a reasonable length of time, may be reported to the union representative.

SECTION 10: An employee who has a complaint concerning unsafe or unhealthy working conditions may file a grievance IAW with the provisions of the negotiated grievance procedure.

SECTION 11: Employees using Video Display Terminals (VDT) on a regular basis will have 30 minute breaks from using the VDT during the first half and last half of the workday to perform duties other than on the VDT to relieve fatigue and tension unless longer periods are required by medical authority.

SECTION 12: The employer will be responsible for setting up a Health and Safety Committee. Participation will consist of at least one (1) union and one (1) management personnel. These parties will be responsible for monitoring the safety of employees working conditions, reporting unsafe conditions to the State Executive Director (or designee) and assisting in the corrections(s) of unsafe conditions, as provided by OSHA. The employer will work in a cooperative manner with the committee in order to promote safety on the job. An annual calendar shall be established within 30 days of fiscal year by mutual agreement between the Union and Employer to schedule all health & safety inspections for all Farm Service Agency Offices.

SECTION 13: When the temperature in an office drops below 60 degrees Fahrenheit or rises above 80 degrees Fahrenheit and the condition cannot be rectified within two (2) hours, other arrangements will be made, not excluding the possibility of dismissal, providing no work exists which can be performed out of the office (e.g. field visits).

SECTION 14: Employee Identification cards will be issued without social security numbers. New cards with this change will be issued to all employees within 180 days of this agreement. The issuance of this card will not negate the necessity to carry the official USDA ID card.

ARTICLE 20 - TRAVEL/TEMPORARY DUTY (TDY)

SECTION 1: Employees will be informed of the opportunity or the requirement to perform temporary duty as much in advance as practical. The employees work schedule will be changed accordingly to accommodate TDY. When the Employer requires TDY and is unable to provide normal notice, reasonable efforts will be made and mutually agreed upon by the employee and supervisor to accommodate special needs of the employee due to the short notice. Employees will not be expected to travel without valid travel orders and authorized travel pay. The Employer agrees to consider financial hardship and other factors when assigning TDY when more than one (1) employee is available for such assignment.

SECTION 2: Travel will be scheduled during the employee's work schedule whenever that is reasonably feasible. When travel is scheduled outside the regular work schedule, overtime or compensatory time will be provided as stated in the FLSA.

SECTION 3: Employees will be entitled to benefits provided by the FTR or any successor regulation. Employees will not be required to use their privately-owned vehicles and accept that local travel at the TDY point will be limited to provisions in the FTR.

SECTION 4: When there is a choice to the mode of transportation or accommodations, the employee desires will be given due consideration by their supervisor. Rental cars will be authorized to employees when warranted.

SECTION 5: When employees are in travel status the Agency agrees to reimburse the employee for their use of a personal cell phone in emergency situations only.

ARTICLE 21 - USE OF OFFICIAL FACILITIES

SECTION 1:

- A. Upon reasonable advance request by the Union, the Employer will provide meeting space in areas occupied by the Employer, if available, for meetings during non-duty hours. The Union will comply with all security, safety and housekeeping rules in effect at that time and place.
- B. The advance request referred to in subsection a. should contain the date, time, duration and purpose of the meeting and the estimated number of employees expected to attend.
- C. Employees attending meetings under subsection a. will do so only during non-duty hours.

SECTION 2:

The Employer will make every effort to provide adequate and reasonable accommodations in which to conduct union business for up to three union representatives at their duty stations. If the official is in a position that permits a private office, that office will be used to conduct union business. For officials in other positions, reasonable accommodations will be provided in the USDA Service Center conference room or, if a conference room is not available, arrangements will be made to use the private office of another employee in that location. Locking filing cabinets will be provided to the union representatives.

SECTION 3:

- A. Sufficient and specific space will be identified by the Employer and provided on bulletin boards or areas, designated by the Employer in appropriate work areas for the display of official Union literature, correspondence, notices and bulletins. The Union agrees that the material posted will be posted during non-duty hours (if pertinent to internal union business) and will not be in violation of the law, regulation or security. The Union upon written justification and notification will promptly remove any posted material, which violates these provisions, by the Employer.
- B. The Union may distribute material on the Employers premises during all non-duty hours (e.g. lunch time) and in non-work areas during normal duty hours of operation of the facility, provided that the employees distributing and receiving the material are on their own time and provided that there is compliance with security regulations.
- C. Material, which does not violate any law, Executive Order, regulation of appropriate authorities, or this agreement, or does not reflect on the integrity or motives of any individuals, government agencies or activities of the Federal Government may be posted on official bulletin boards or distributed.
- D. All costs incidental to the preparation, posting, and/or distribution of internal union material shall be borne by the Union.
- E. The posting of materials on Union space on official bulletin boards shall be done only by employees during non-duty hours.

SECTION 4: Mail Distribution

The Union may use the Employers mail distribution system for official correspondence with the Employer and members of the bargaining unit in matters relating to grievances and appeals.

SECTION 5: Telephone Use

- A. The Union Official or their designee will have use of a Federal Telecommunications System (or equivalent) telephone for the purposes of appropriate communications dealing with employee's grievances and appeals.
- B. Union representatives (officers and stewards) may use and will have use of available telephones, including use of the Agency calling card issued by the employer, for calls with bargaining unit members, and other appropriate agencies while performing representation functions. The calling card will only be used while in travel status.

SECTION 6: The Agency will make available to Union Officers the use of the following for representational duties:

- 1) Fax Machine,
- 2) Personal computer with standard software, programs, and capabilities compatible with the Agencies Technology.
- 3) Laser printer,
- 4) Access to e-mail,
- 5) Copy machine, and paper
- 6) Mail

SECTION 7: TRANSPORTATION

- A. Where travel to another location within the jurisdiction of the Local Union is necessary for representation activities, the union will be provided transportation, when available.
- B. When a Union representative uses a privately owned vehicle because of non-availability of a government owned vehicle, travel reimbursement will be rendered pursuant to travel regulations.
- C. Travel of a Union representative outside of normal working hours will not be subject to overtime in accordance with FLSA or as otherwise.

ARTICLE 22 - PERFORMANCE APPRAISAL SYSTEM

SECTION 1: Overview

- A. FSA will strive for continuous improvement in performance to fulfill the Agency's commitment to providing quality customer service. Accomplishment of the mission is intended to be achieved within an environment that both recognizes the interdependence of employee contributions and promotes teamwork.
- Improvement in Agency performance will be sought by analyzing work processes and correcting systemic problems and/or revising processes, as appropriate. Consistent with the Agency's commitment to an environment that promotes teamwork, the cornerstone of performance evaluation will be the accomplishment of group or team objectives.
- B. The purpose of the performance appraisal system agreed to in this Article is to provide a fair and equitable framework for honest feedback and open, two-way communications between employees and their supervisors. The system focuses on contributions within the scope of the employee's job description in achievement of the Agency's overall mission. Accomplishment of objectives is intended to be achieved within a team environment. The performance appraisal system includes an annual written appraisal of achievement for each employee.
- The performance appraisal system will emphasize:
- 1) Continuous communication
 - 2) Employee development (rather than being used as a disciplinary tool)
 - 3) Administrative simplicity (rather than labor-intensive)
 - 4) The evolution of the supervisor's role to coach
 - 5) Recognition of special skills and contributions as part of or in addition to regular job duties
 - 6) Employee input into group objectives
 - 7) Overall employee contributions
 - 8) Encouragement of unit and group towards achievement of the Agency's mission
- C. An annual rating of "Results Achieved" is necessary for eligibility to receive within-grade increases, promotion consideration, and award consideration and serves as a positive, tangible assertion that the employee is in "good standing" from the standpoint of work performance.
- The Performance Appraisal System as set forth in this Article is intended to be innovative and evolutionary in nature. Its effectiveness is critical to the Agency achieving its mission.

SECTION 2: Policy

In its entirety and application, the Performance Appraisal System must be fair, equitable, and based upon an employee's position description and individual performance of these requirements.

SECTION 3: Performance Planning

All performance appraisals will be based on individual performance plans which consist of critical and non-critical elements and performance standards.

- A. Preparation and communication of performance plans.
- 1) Individual performance plans will be established and communicated in writing within 30 days of the beginning of each appraisal period.
 - 2) Performance plans shall be reestablished or revised each time a work assignment changes significantly, whether or not the work assignment requires a personnel action. Employees must be informed and participate in any revision and changes made to their written performance plans.
 - 3) Individual performance plans will be established and communicated in writing to the employee within 30 days of an employee's assignment to a position (e.g., promotion, reassignment, appointment).

- B. Employee participation in establishing performance plans.
Supervisors and managers have a major responsibility to ensure consistency, objectivity, and equity in the development of performance elements and standards and the subsequent appraisal of performance against these standards. Elements and standards must be based on the requirements of the employee's position. Communication between the supervisor and the employee is essential in this process. The identification of performance elements and the establishment of performance standards require joint participation of the supervisor and the employee in developing performance plans. Final authority for establishing elements and standards rests with the supervisory officials. Joint participation may be accomplished by means including, but not limited to, the following:
- 1) Employee and supervisor discuss and develop performance plan together.
 - 2) Employee provides supervisor a draft performance plan.
 - 3) Employee comments on draft performance plan prepared by the supervisor; or
 - 4) Employees who occupy similar positions prepare Performance plan(s) with supervisor's approval.
- C. The union will be invited to observe and/or participate in any meeting or negotiation of performance standards which would result in basic position standards.
- D. Performance standards that assess an employee's performance must be job-related, documented and measurable. There must be a nexus between the expected performance and the expected job results.

SECTION 4: Communications

- A. An orientation briefing will be provided to all new employees entering on duty by the employee's supervisor, and there will be an oral discussion to explain, clarify, and communicate the employee's job responsibilities as articulated in the employee's position description and/or performance plan. The purpose of this discussion is to ensure that there is a clear and common understanding of the duties and responsibilities contained in the employee's position description and/or performance plan.
- B. The supervisor will assure that the employee has an up-to-date position description, up-to-date copy of the Agency's mission and goals and, if applicable, the career ladder plan and will initiate a dialogue with the employee to discuss the employee's duties and responsibilities in relation to the organizational unit's goals and the Agency mission.
- C. Subsequent orientation sessions should be held when there is a change in the work situation. Examples may include:
- 1) A change in the supervisor of record,
 - 2) When the employee is detailed,
 - 3) A change in the work unit's goals or objectives,
 - 4) A change in assignments,
 - 5) A change in the work processes of the unit, or
 - 6) When an employee returns from an extended absence of ninety (90) calendar days or more.
- D. Informal discussions are a standard part of supervision and should occur throughout an appraisal period.
- 1) Discussions may be initiated by the supervisor or employee. Discussions may be held one-on-one or between a supervisor and a work group.
 - 2) Discussions should be candid, forthright dialogues between the supervisor and employee(s) aimed at improving the work product. Discussions will provide the opportunity to assess accomplishments and progress and identify and resolve any problems in the employee's or work team's work product. Where indicated, the supervisor should provide additional guidance aimed at developing the employee(s) and improving the work product or outcome. Discussions will provide the employee the opportunity to seek further guidance and understanding of his or her work performance.

SECTION 5: Uses of the Performance Appraisal System

The performance appraisal system is used for making a basic determination that an employee's work performance is in "good standing." It is also the basis for making certain personnel-related decisions.

- A. Within-Grade Increases - An employee who has attained a rating of "Results Achieved" and has achieved an "acceptable level of competency" will be entitled to appropriate within-grade increases.
- B. A rating of "Results Achieved" will be used as a qualifying factor in determining basic eligibility for consideration of awards, promotions, and other personnel actions.

SECTION 6: Process

- A. All bargaining unit employees will receive an annual performance appraisal for the period October 1 through September 30, or other dates agreed to by the parties, certifying the level of performance of job duties and responsibilities. The evaluation will be issued in writing to the employees within sixty (60) calendar days of the end of the appraisal period. Employees new to the Agency (with less than ninety (90) calendar days) as of September 30, will receive a delayed evaluation upon completion of one hundred eighty (180) calendar days.
- B. When evaluating performance, the supervisor will take into consideration factors which affect performance that are beyond the control of the employee.
- C. Supervisors shall assist employees in improving less than "Results Achieved" performance. Such assistance may include, but is not limited to formal training, on-the-job training, counseling, and closer supervision. If performance is "Results Not Achieved" in one or more critical elements of the job, the supervisor shall inform the employee, in writing, as soon as the "Results Not Achieved" performance is apparent, inform the employee of standards that must be met for "Results Achieved" performance, and provide the employee a reasonable opportunity period to demonstrate "Results Achieved" performance.
- D. At any time during the assistance period the supervisor may conclude that assistance is no longer necessary. The supervisor will so notify the employee of this determination in writing.
- E. If, following the assistance period, the supervisor is unable to make an evaluation that the employee is fully successfully performing his/her job duties and responsibilities, the supervisor will give the employee a documented performance interview communicating (1) this determination, (2) that the employee will be placed on a formal Opportunity to Improve (OTI), and (3) that personnel related actions (WIGI, awards, etc.) will be withheld while this level of performance continues. The employee is entitled to a union representative at this performance interview.
- F. To accommodate the provisions of parts C and E, it is understood that performance plans may be extended.

Section 7: Opportunity to Improve (OTI)

- A. If the supervisor determines under Paragraph 6E that the employee is not fully successfully performing his/her job duties, the supervisor shall, in addition to providing the employee the written notice discussed above, develop in consultation with the employee and union representative, upon request, a written OTI. The OTI will identify the employee's performance deficiencies, the "Results Achieved" level of performance, the action(s) that must be taken by the employee to improve to the "Results Achieved" level of performance, the methods that will be employed to measure the improvement, and any provisions for counseling, training, or other appropriate assistance. The goal of this OTI is to return the employee to "Results Achieved" performance as soon as possible.
- B. A reasonable period of not less than ninety (90) calendar days under a OTI will be given for the employee to achieve "Results Achieved" performance as soon as possible.
- C. At any time during the OTI period, the supervisor may conclude that the employee's performance has improved to the "Results Achieved" level and the OTI can be terminated. In that event, the supervisor will notify the employee in writing, terminate the OTI, and evaluate the employee as "Results Achieved", if appropriate.

SECTION 8: Performance-Based Actions

- A. Should all remedial action fail and the employee's performance is determined to be unacceptable, the supervisor will issue a rating of unacceptable performance to the employee. One of the following actions will be taken: reassignment, reduction to the next lower appropriate grade, or removal.
- B. An employee who is reassigned or demoted to a position at a lower grade will receive a performance appraisal after ninety (90) calendar days in the new position.
- C. An employee whose reduction in grade or removal is proposed for unacceptable performance is entitled to:
 - 1) Thirty (30) calendar days' advance written notice of the proposed action which identifies the specific basis for the proposed action including specific instances of unacceptable performance and
 - 2) A reasonable time, not to exceed twenty (20) calendar days, to answer orally and in writing.

The decision to retain, reduce in grade, or remove an employee shall be made within thirty (30) calendar days after the date of expiration of the notice period.

- D. The employee will be given a written decision which:
 - 1) Specifies directly or by reference the instances of unacceptable performance on which the decision is based and
 - 2) Specifies the effective date, the action to be taken, and the employee's right to appeal the decision.
- E. The employee may appeal to either the Merit Systems Protection Board in accordance with applicable law or file a grievance under the negotiated grievance procedure, but not both.

SECTION 9: Statistical Data

Both parties agree that statistical data utilized to evaluate process effectiveness or individual performance must be reliable, valid, fair, and equitable.

ARTICLE 23 - PRINTING AND DISTRIBUTION OF THE AGREEMENT

SECTION 1: The Employer agrees to print and furnish the Union, at no cost, one copy of this agreement for every bargaining unit employee plus fifty (50) additional copies for the Union. The distribution of the agreement to bargaining unit members is the responsibility of the Union.

SECTION 2: The Union shall have the right to approve the proof copy prior to going to press and shall initial the proof for record purposes.

SECTION 3: For historical purposes, the Employer and the Union shall sign one (1) record copy of the agreement.

SECTION 4: Any amendments and supplements hereto shall be published and distributed in the manner described for the basic agreement.

SECTION 5: The agreement will be printed as mutually agreed upon.

ARTICLE 24 - DURATION OF AGREEMENT

SECTION 1: This agreement shall remain in full force and effect for three (3) years from the date the agreement is approved by USDA Labor Relations or 30 days after its execution by the parties, whichever date occurs first.

SECTION 2: Either party may give written notice to the other, not more than 105 days nor less than 60 days prior to the three (3) year expiration date for the purpose of re-negotiation of this agreement. The terms of this agreement will remain in force and effect during the re-negotiation of said agreement until such time as a new agreement is approved and in effect, except for those terms which are nullified by law.

SECTION 3: If neither party serves notice to re-negotiate this agreement, the agreement shall be automatically renewed for one (1) year periods.

SECTION 4: This agreement may not be reopened unless required by law or unless mutually agreed upon by the parties.

ARTICLE 25 - DUES DEDUCTION

DUES DEDUCTION: Voluntary allotment by Employees for the payment of dues to the Union shall be authorized and processed in accordance with the January 15, 1979, Memorandum of Understanding between the U.S. Department of Agriculture and the American Federation of Government Employees covering Employee dues deductions. A copy of this Memorandum of Understanding is attached hereto as Appendix A

ARTICLE 26 – MERIT PROMOTION

Preface: The Parties recognize management's right to assign work in accordance with Article 6, Section 3 of this agreement. Consistent with that right, the Parties acknowledge that this Article contains work assignments to be performed by specific Agency officials referred to by position. Such language is not intended to contractually bind management to assign the stated work to those officials. Rather, it is intended to reflect management's decision to make those assignments in accordance with its reserved right to assign work, and is included as a matter of administrative convenience to promote full understanding of the Merit Promotion plan.

SECTION 1: Policy

- A. To promote fair and equitable treatment for all employees, this plan defines how consideration will be given to all interested applicants.
- B. This supplement does not guarantee promotion, nor does it require a vacancy be filled by promotion.
- C. Actions under this Merit Promotion Plan--whether in identification, qualification, evaluation, or selection of candidates, or any other phase of the promotion process--shall be made without discrimination for any non-merit reason.
- D. This plan covers promotions in the competitive service through GS-15 and similar pay schedules, and to or from any prevailing rate schedule position.
- E. Any exception to this merit promotion policy must be approved by the head of the national Human Resources Office or designee.

SECTION 2: Objectives

- A. The objectives of this plan are to:
 - 1) Narrow the number of candidates to a reasonable number and ensure that selections are made from among the best-qualified applicants.
 - 2) Give employees an opportunity to receive fair, equitable, and appropriate consideration for higher level jobs.
 - 3) Provide an incentive for employees to improve their performance and develop their KSA's.
 - 4) Provide career opportunities for employees.
 - 5) Bring the best-qualified candidates to the attention of the selecting official.
 - 6) Enhance and support diversity in the workforce.

SECTION 3: Coverage

The following types of personnel actions are covered:

- A. Competitive promotion.
- B. Reassignment or demotion to a position with more promotion potential than the highest actual grade held by an employee on a permanent basis under a career or career-conditional appointment.
- C. Transfers to a higher-graded position or a position with higher promotion potential than the highest actual grade previously held by an employee on a permanent basis under a career or career-conditional appointment.
- D. Reinstatement to a higher-graded position or a position with higher promotion potential than the highest actual grade held by an employee on a permanent basis under a career or career-conditional appointment.
- E. Selections for details for more than 120 calendar days to a higher-graded position or to a position with known promotion potential.
- F. Selection for training that is any 1 of the following:
 - 1) Part of an authorized training agreement.
 - 2) Part of a promotion program, although the promotion may not immediately follow the training.
 - 3) Required before an employee is qualified for reassignment to a different occupational series.
 - 4) Part of a Career Enhancement Program.
 - 5) Designed primarily to prepare employees for advancement or to fulfill specific qualification requirements for a position with known promotion potential.

- G. Time-limited promotion for more than 120 calendar days to a higher-graded position or a position with higher promotion potential, unless the selectee has held the grade previously on a permanent basis.

SECTION 4: EXCEPTIONS

The following types of personnel actions are not covered:

- A. Competitive selection from an OPM certificate or a certificate issued by an Agency with delegated examining authority.
- B. Promotions resulting from an employee's position being reclassified at a higher grade because of accretion of duties and responsibilities.
- C. Promotions resulting from upgrading a position, without significant changes in the duties or responsibilities, because of either the issuance of a new classification standard or the correction of an initial classification error.
- D. Career-ladder promotions when an employee was previously selected for an assignment intended to prepare him or her for the position being filled. Sources of selection may be 1 of the following:
 - 1) An OPM certificate.
 - 2) A list of employees issued under delegated examining authority.
 - 3) Selection under competitive promotion procedures.
 - 4) Special Placement Programs.
 - 5) Any other direct hire authority.
- E. 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, provided the employee was not demoted or separated from that grade because of deficiencies in performance or "for cause" reasons.
- F. Details, not longer than 120 calendar days, to a higher-graded position or to a position with no known promotion potential.
- G. Details at the same or lower grade.
- H. Actions taken as a remedy for failure to receive proper consideration in a competitive promotion action.
- I. Promoting an employee upon exercise of reemployment rights if the employee's former position was reclassified during his or her absence.
- J. Selection of a candidate from RPL for a position up to the highest grade previously held in the competitive service.
- K. Position changes permitted by RIF regulations.
- L. Repromotion to a grade or position from which an employee was demoted as a result of RIF.
- M. Selection by reassignment to a position with the same or less promotion potential than a position previously held under a career or career-conditional appointment.
- N. A temporary promotion for 120 calendar days or less to a higher-graded position or to a position with known promotion potential.
- O. Permanent promotion to a position held under temporary promotion when:
 - 1) The assignment was originally made under competitive procedures.
 - 2) It was made known under competitive procedures to all competitors at the time that it might lead to a permanent promotion.
- P. Voluntary change to a lower grade with the same or less promotion potential than previously held under a career or career-conditional appointment.
- Q. A position change from a position having known promotion potential to a position at the same grade having no higher potential.
- R. Selection of an eligible CT AP or ICT AP candidate.

SECTION 5: Methods for Filling Vacancies

Vacancies may be filled by any appropriate method including special placement programs, new appointment, reassignment, transfer, reinstatement or promotion, etc.

SECTION 6: Priority Placement Programs

- A. When a position is announced with an area of consideration limited to all or some portion of the USDA workforce, the order of consideration for priority and other candidates is as follows:
 - 1) Agency CTAP eligibles.
 - 2) USDA CT AP eligibles.
 - 3) Agency/USDA repromotion eligibles.
 - 4) Agency priority consideration eligibles.
 - 5) All other applicants within the area of consideration.
 - 6) RPL registrants at the option of the selecting official.
- B. When a position is announced with an area of consideration which exceeds the current USDA workforce, such as Government wide or all sources, the order of consideration for priority and other candidates is as follows:
 - 1) Agency CTAP eligibles.
 - 2) USDA CT AP eligibles (3) USDA RPL registrants.
 - 3) USDA ICTAP applicants.
 - 4) Agency/USDA repro motion eligibles.
 - 5) Agency priority consideration eligibles.
 - 6) ICT AP eligibles (other than those displaced from USDA).
 - 7) All other applicants.
- C. USDA Repromotion Placement Plan.
Employees downgraded through no fault of their own are entitled to priority consideration for a period of 2 years from the effective date of the employee's downgrade.
- D. Priority Consideration
Employees are entitled to priority consideration whenever reconstruction of a promotion action shows that, except for some error (such as wrong qualification determination, failure to consider, improper rating, failure to follow competitive procedures, etc.), the employee would have appeared on a promotion certificate. The employee shall be entitled to 1 bonafide consideration for the type (same series, grade, up to the same promotion potential, and geographic area) of position previously applied for under competitive procedures. A priority consideration certificate will be forwarded to the selecting official before issuing a competitive certificate. If no priority consideration candidate is selected, the selecting official must provide job-related justification for the nonselection.

SECTION 7: Initiating the Vacancy

- A. The supervisor of the vacancy will submit SF-52 through appropriate channels. With SF-52, the supervisor will attach a Position Description Cover Sheet and a current position description that accurately describes the position to be filled.
- B. No action will be taken to staff the vacant position until the position is classified.
- C. The selecting official will determine, in consultation with the Personnel Specialist, the best way to fill the vacancy (OPM register, transfer, reinstatement, merit promotion procedures, Special Placement Programs, etc.).

SECTION 8: Procedures When Vacancy is Announced

The following procedure will be followed for all merit promotion vacancies:

- A. Identification of Selection Criteria.
Agencies have the option of using either KSA's or job-related statements to determine best qualified candidates.

Before posting the vacancy announcement, the Personnel Specialist determines that KSA's or job-related statements are:

- 1) Established for the position. The Personnel Specialist will discuss and review with the selecting official the existing KSA's or job-related statements to determine whether they are still appropriate
- 2) Not established for the position. The Personnel Specialist will contact the selecting official to establish KSA's or job-related statements.

B. Minimum Area of Consideration

The following is designated as the minimum area of consideration:

- 1) The parties agree that first consideration for all merit promotion vacancies within the bargaining unit will be restricted to current federal employees of the Farm Service Agency within New York State. This does not preclude the Employer from concurrently soliciting applications from outside sources through one vacancy announcement. Management has the right to fill vacancies from any other appropriate source, per 5 U.S.C. 7106(a)(c)(ii).
- 2) Any single Agency, Service, or Bureau, National/Headquarters Offices -commuting area.
- 3) Any single Agency, Service, or Bureau, State/Field Offices -commuting area.

A wider area of consideration may be initially established to obtain more qualified candidates if it is anticipated that sufficient candidates will not be available.

C. Preparation and Posting Vacancy Announcements

- 1) Vacancy announcements will normally be posted for a minimum of 10 workdays. Announcements with the area of consideration limited to CT AP/ICT AP candidates may be open for 5 calendar days.
- 2) Nationwide/Governmentwide will be posted for a minimum of 21 calendar days.
- 3) Close of business in Field Offices will be determined by the appropriate official in each office.
- 4) Vacancies will be posted on the automated bulletin board systems prescribed by OPM. Offices will ensure announcements are posted to provide for adequate publicity to employees.

SECTION 9: Submitting Applications

A. To be considered for posted vacancies, the following procedures must be followed:

- 1) Applicants must submit the following:
 - (a) SF-171, OF-612, or resume.
 - (b) Supplemental statement that addresses each of the KSA 's separately or other information included in the announcement, such as job-related statements.
 - (c) Current performance appraisal/rating or a statement advising the performance appraisal/rating is unavailable.
Note: This applies only to current Federal employees.
 - (d) Any other information as specified in the vacancy announcement.
 - (e) Noncompetitive referral candidates are not required to submit KSA supplemental statements although they are encouraged to do so.

Notes:

- ◆ Failure on the part of the applicant to submit the requested material will result in not being considered for the advertised position.
 - ◆ KSA supplemental statements, if used, may not be more than 2 single-spaced pages per KSA unless otherwise stated on the vacancy announcement.
 - ◆ Additional materials, such as copies of position descriptions, publications, and award certificates, will not be considered in the ranking process.
- B. Applications must be received at the specified location by the close of business on the closing date of the vacancy announcement unless otherwise stated on the vacancy announcement. Exceptions to this requirement may be made by the servicing Human Resources Office for reasons such as extended power outages, severe weather, etc.
 - C. Applications submitted by FAX or other electronic means as specified in the announcement will be accepted.
 - D. Employees who are on extended leave are responsible for notifying their supervisor if they want to be considered for promotional opportunities while they are on travel or leave. Employees shall leave a telephone number, e-mail address, and/or FAX number with their supervisor. The supervisor is responsible for contacting the employee to provide vacancy information.
 - E. Voluntary applications within the Agency will not be accepted unless so stated on the vacancy announcement. The vacancy announcement will outline the method of considering candidates when applications are accepted.

- F. Applications will normally be accepted from candidates under special hiring authorities, that is, VRA, 30 Percent Disabled Veteran, Persons with Disabilities, etc. Qualified candidates will be placed on the promotion certificate as noncompetitive referrals. The vacancy announcement will indicate if candidates under special hiring authorities will not be considered.
- G. Pub. L. 105-277, Section 765, states that permanent employees of FSA COC's employed on or after October 1, 1998, shall be considered as having Federal Civil Service status for the purpose of applying for USDA Civil Service vacancies. Applications will be accepted from permanent FSA COC employees who were employed on or after October 1, 1998, when the area of consideration includes FSA employees. FSA COC employees do not receive any priority consideration for Civil Service vacancies.

SECTION 10: Evaluation to Determine Eligibility, Basic Qualifications, and Notification to Candidates.

- A. Qualifications of the applicants will be determined from the application package submitted and the applicant notified of the results.
- B. Minimum qualification standards used for placements are standards approved by OPM and may be found in OPM Handbook, Qualification Standards for General Schedule Positions and the X-118C, Internal Qualifications Guide for Trade and Labor Jobs. The Personnel Specialist will assure that all of the following requirements are met:
 - 1) Time-in-grade restrictions.
 - 2) Qualification Standards for General Schedule Positions or the X-118C standards.
 - 3) 90 calendar days after competitive appointment restriction.
 - 4) Any other requirements such as selective placement factors, such as ability to communicate in a foreign language.
 - 5) Summary performance rating of fully successful or results achieved.
- C. Applicants must meet all of the above requirements by the closing date of the announcement.
- D. Submission of additional information after the closing date will not be accepted.

SECTION 11: Rating and Ranking Procedures

Either a Merit Promotion Panel, Personnel Specialist/Subject Matter Expert, or automated rating of responses to job-related statements may be used to rate and rank candidates. A panel may be used for any vacancy regardless of the number of competitive candidates. A Personnel Specialist/Subject Matter Expert may be used if there are 10 or less competitive candidates for any particular advertised grade level. The same method will be used for any position(s) advertised at multiple grade levels.

A. Merit Promotion Panel Method

- 1) Merit Promotion Panel Composition
 - (a) The Personnel Specialist will assemble a Merit Promotion panel consisting of at least 2 members who occupy positions at a grade level not lower than the full performance level of the position being filled. The selecting official may recommend members to serve on the panel subject to the approval of the Personnel Specialist.
 - (b) The Personnel Specialist will serve as a facilitator with responsibility for ensuring the requirements of merit promotion procedures are followed and to assist in expediting the process.
 - (c) Neither the supervisor, the selecting official, nor the approving official of the vacancy may be a member of the panel. They may, however, be asked to appear before the panel to answer any questions regarding the vacancy or the crediting plan.
 - (d) Merit Promotion Panels should include minority group members and/or women.
 - (e) Members of the panel will protect the confidentiality of all information received or reviewed during the committee process.
 - (f) There may be an EEO observer present during this process.
- 2) Merit Promotion Panel Delegated Responsibility

The Merit Promotion Panel has the final responsibility for determining best qualified candidates based on valid, job-related criteria and employee's application package. They are accountable for defending their final decision to any regulatory or investigative agency.
- 3) Merit Promotion Panel's Rating of the Candidates

- (a) The Merit Promotion Panel will use the following rating instruments to determine a candidate's possession of each identified KSA and the level of proficiency attained.
- (b) Rating Instruments: Application, KSA's, performance appraisal, related awards, training and self-development.

Note: These factors may be considered in the evaluation process only to the extent that they are clearly related to 1 or more of the skills and knowledges important to successful performance in the job to be filled.

- (c) A rating scale will be developed for each KSA against which an applicant's possession of that KSA will be measured. The point range is 5 -0.

Superior 5 points will be assigned

Satisfactory 3 points will be assigned

Minimally acceptable -1 point will be assigned

No evidence - 0 point will be assigned

B. Personnel Specialist/Subject Matter Expert Ranking Method

- 1) If there are 10 or fewer qualified competitive applicants at each particular grade level for a vacancy, a Personnel Specialist may be used to determine the best qualified.
- 2) The Personnel Specialist or Subject Matter Expert will apply the same rating criteria used by a merit promotion panel as described above in paragraph 11 A (3).

C. Automated Rating of Job-Related Statements - An automated rating of responses to job-related statements may be used to rate candidates.

D. Determining the Best Qualified

- 1) Each basically qualified competitive candidate is evaluated against criteria developed from the job analysis process, which was developed before rating. Each candidate is given a score based on their experience, education, related awards, training, and self-development. These scores are then combined and recorded on the master score sheet.
- 2) Up to 10 candidates may be certified for each grade level if meaningful distinctions cannot be made among a smaller number.
- 3) Where distinctions simply cannot be made if a tie occurs for the 10th position, all names with that score will be referred.
- 4) If more than 1 position is to be filled, 3 additional names may be certified for each additional vacancy.
- 5) If insufficient candidates (3 or less) are best qualified, the selecting official may make a selection or request that the area of consideration be extended.
- 6) There is no provision allowing the selecting official to request and make a selection from candidates who have not been rated best qualified.

SECTION 12: Alternative Evaluation Method

- A. This is an alternate approach for determining well-qualified candidates when 10 or fewer applications are received from basically qualified candidates who must compete.
- B. The Personnel Specialist reviews application materials to determine that an applicant meets basic qualifications and any selective factors identified for the position. A further review is conducted to distinguish well-qualified candidates from those who only meet minimum requirements.
- C. If a Personnel Specialist is not familiar with the requirements of the position to determine whether experience, education, or training relates to the evaluation criteria, then a subject matter expert may perform the evaluation or his or her technical advice may be obtained.
- D. Applicants who meet all these requirements are referred to the selecting official as well qualified candidates for consideration by the selecting official.
- E. Any basically qualified candidates for lateral reassignment and those eligible for consideration under special hiring authorities or for reinstatement will be referred to the selecting official without being evaluated by any of these methods.

SECTION 13: Selection Process

- A. The names of the best-qualified candidates will be listed on the promotion certificate by grade level in alphabetical order.

- B. The selecting official may be provided with all best qualified candidates' KSA supplemental statements, applications, and any other related material.
- C. The selecting official has the option to either interview or not to interview the best qualified candidates on a promotion certificate. If one best-qualified candidate is interviewed, then all best qualified candidates must be interviewed. Noncompetitive referrals need not be interviewed, nor must the selecting official interview all noncompetitive referrals if they interview one.
- D. The selecting official is entitled to make a selection from any of the candidates listed on a promotion certificate based on his or her judgment of how well the candidate will perform in the particular job being filled.
- E. The selecting official will make his or her selection and forward it through appropriate approving officials. Each candidate will be notified of the selection.
- F. The promotion certificate should be returned within 30 calendar days. If the selecting official is unable to make the selection, extensions may be granted up to 90 calendar days from the date the certificate was originally issued. In the event a like (same Agency, official title, series, grade, and geographic location) vacancy occurs within the original area of consideration during the 90-calendar-day period, the same certificate may be used to fill the subsequent vacancy(s) without re-advertising.
- G. The selecting official is not required to make a selection from the promotion certificate but may select from any other appropriate source.
- H. A selected candidate will normally be released to enter on duty in the new position no later than 1 full pay period after selection. Extensions beyond the normal pay period will be negotiated between the supervisors involved by the Personnel Specialist.

SECTION 14: Promotion Records and Information

- A. The Human Resources office will establish and maintain an official promotion case file for 2 years.
- B. The following information will be provided to any employee upon request:
 - 1) Explanations and supporting regulations concerning the Merit Promotion Plan.
 - 2) The qualifications required for a position.
 - 3) If the employee was considered and basically qualified.
 - 4) Whether the employee was among the best qualified and how the employee was evaluated by the Merit Promotion Panel or Personnel Specialist.
 - 5) Cut-off score for best qualified.
 - 6) Scores of other candidates, not identified by name.
 - 7) Number of qualified candidates.
 - 8) Number of candidates certified as best qualified.
 - 9) Who was selected.
- C. Employee Complaints: An employee has the right to file a grievance or complaint if he or she feels:
 - 1) There has been an improper application of governing rules and regulations.
 - 2) The Merit Promotion Plan procedures were not followed.
 Individual judgments used in merit promotion process or non-selection from a group of properly ranked or certified candidates are not subject to the formal administrative grievance process.
- D. All employees are encouraged to discuss plans and opportunities for advancement with their supervisor and request information and/or assistance from the servicing office on specifics of the Merit Promotion Plan, qualification standards, etc.

SECTION 15: Program Review

This plan will be reviewed and reported on periodically in conjunction with managers, supervisors and employees to ensure that:

- A. The plan is effective and useful to employees and management.
- B. Promotion actions and employee complaints are handled promptly and properly.
- C. Promotions are used to encourage competent employees to investigate new careers and to make the best use of their knowledge and skills.
- D. Employees, supervisors and managers have a full understanding of the merit promotion process.

SECTION 16: Employee, Supervisor and Human Resource Responsibilities

A. Employee Responsibility

- 1) Review announcements under the Merit Promotion Program.
- 2) Review announcements and, if they feel they meet specific experience and training requirements for the position, properly complete and forward all required application material by the closing date for each position for which they wish to be considered, keeping in mind that the promotion certificate can be used for another like (same Agency, official title, series, grade, and geographic location) vacancy that occurs within 90 calendar days.
- 3) Keep supervisors informed of career interests. Before departure on temporary duty, scheduled leave, and other absences, provide supervisor with a telephone number, e-mail address and/or FAX number at which they may be contacted.
- 4) Take advantage of self-development and training opportunities, both on and off the job.
- 5) Demonstrate competence and readiness for advancement by diligent and effective performance in current assignment.
- 6) When requested, participate in applying OPM regulations to establish reasonable job-related evaluation criteria (KSA 's) or job-related statements, and participate on promotion panels for determining best-qualified candidates.
- 7) Assure that official personnel records reflect all experience, education, and training.
- 8) Keep informed of the provisions of this plan.

B. Supervisor Responsibility

- 1) Maintain a current copy of this plan, make it available to their employees, and exert every effort to ensure that employees fully understand the plan.
- 2) Inform new employees where position vacancy announcements are posted.
- 3) Periodically inform employees, either orally or in writing, that questions about the plan or specific promotion actions should be referred to the servicing Human Resources Office for informal handling and that formal means for resolving promotion complaints are available through Agency Grievance Procedures.
- 4) Anticipate personnel vacancies and initiate action in a timely manner so that sufficient qualified applicants can be found to facilitate the best selection.
- 5) Participate in applying OPM regulations to establish reasonable job-related evaluation criteria (KSA's or job-related statements).
- 6) Participate in or make employees available for rating panels.
- 7) Give fair, equitable, and full consideration to all candidates referred and make a final selection from the list without discrimination for any nonmerit reason and without favoritism based on personal relationship or patronage.
- 8) Under the provisions of this plan, release a selected employee for assignment to his or her new job.
- 9) On a fair and equitable basis, guide and assist employees in developing skills and abilities through cross-training, special assignments, and formal education, as needed. Encourage and advise employees regarding self-development needs and opportunities, and on areas where improvement should be made to increase chances for future promotion.

C. Human Resources Responsibility

- 1) Develop and administer the Merit Promotion Plan.
- 2) Ensure the quality and effectiveness of the merit promotion program and management/employee understanding and acceptance.
- 3) Through job-analysis, develop and administer selective placement factors for basic eligibility and identification of job-related criteria.
- 4) Determine and/or develop appropriate evaluation methods and instruments to be included in crediting plans or automated staffing systems.
- 5) Provide technical advice and assistance to panel members responsible for rating candidates.
- 6) Publicize the program to keep management and employees well informed.
- 7) Furnish advice and assistance to employees interested in advancing or transferring to new career fields.

- 8) Evaluate program effectiveness to include initiation of improvements or necessary changes.
- 9) Maintain records according to OPM and USDA requirements.
- 10) Give new employees general information on the program as a part of employee orientation.
- 11) Advise of methods and procedures for filling all vacancies.
- 12) Advise candidates who apply for promotion whether they meet basic eligibility requirements and inform them of action taken on their applications.
- 13) Ensure that position vacancy announcements are published.

ARTICLE 27 - ADVERSE WEATHER

This Article establishes procedures for office operations during inclement weather or other hazardous or emergency situations that may necessitate the closing of the office for all or part of the workday. It is recognized that good communications with employees and the other USDA Service Center agencies within an office location is critical. The ultimate goal of this article is to maximize employee health and safety during such situations.

SECTION 1: Early Dismissal.

When a decision is made to close the office and dismiss employees early, the following will apply:

- A. If an employee is on active duty, no charge will be made to that employee's leave. The time from dismissal is excused as administrative leave.
- B. If an employee is on active duty but left work early before or after an early dismissal was announced and before the effective dismissal time, the time from the dismissal is excused as administrative leave. The time between the employee's departure and the dismissal time will be charged as annual leave.
- C. If an employee was on leave and was scheduled to report later in the day but an early dismissal occurs, the employee is charged leave until the early dismissal time. The time from dismissal is excused as administrative leave.
- D. If an employee requests unscheduled leave on a day that adverse conditions affect their travel to work, and an early dismissal later occurs, the employee is charged leave until the early dismissal time and is excused on administrative leave from the time of dismissal.
- E. If an employee is absent for the entire work day on previously approved scheduled or unscheduled leave as defined in Article 7 of the Labor/Management Agreement, the employee is charged that leave for the entire day.

SECTION 2: Office Closing for the Entire Day.

In USDA Service Center locations, the decision to close the office is made by the local Food and Agriculture Council (FAC) that includes representatives of all Service Center agencies and will be based on conditions in the area in which the office is located. In non-Service Center offices, the decision to close will be made by the Farm Loan Manager or designated supervisor for all employees in that office location. The decision to close will be made as early as possible to allow adequate time to notify employees of the closure before they depart for work. Closure of roads by a local or State official within part or throughout an entire county in which the office is located will automatically close the office for the time period that the road closure is in effect.

When a decision is made to close the office for an entire workday, employees will not be charged leave and will be placed on administrative leave. Employees who were on previously approved scheduled or unscheduled leave will be charged that leave for the entire day.

SECTION 3: Delayed Opening.

On occasion, conditions may develop that may make it difficult and/or hazardous for employees to arrive at work on time but would not necessitate the office to close. On such occasions, the local FAC (or FLM or other designee in non-service center locations) may delay opening a service center for an appropriate period of time to permit the difficult or hazardous conditions to be abated. If the decision is made to delay opening a service center, the following will apply:

- A. Employees scheduled to be on active duty will be on administrative leave for the period the office is closed. No charge will be made to that employee's leave.
- B. If an employee was on leave and was scheduled to report later in the day after the delayed opening, the employee is charged leave only for the time between the delayed opening and when they report to work. The time until the delayed opening is excused as administrative leave.

- C. If an employee requests, by the time the delay opening occurs, leave for the remainder of the work day, the employee will be charged leave only from the time of the delayed opening until the end of the work day. The employee will receive administrative leave for the period the office was closed.
- D. If an employee is absent for the entire work day on previously approved scheduled or unscheduled leave as defined in Article 7 of the Labor/Management Agreement, the employee is charged that leave for the entire day.
- E. If the conditions do not improve prior to the delayed opening time, a decision may eventually be made by the local FAC (or FLM in non-service center locations) to close the office for the entire day. In such cases, administrative leave will be granted as outlined in number 2 above.

SECTION 4: Individual Excusal.

It is recognized that individual circumstances, such as the location of an employee's residence, may require excusals in times of inclement weather or hazardous conditions. Such factors as the distance between an employee's home and the office, availability of public transportation, efforts made by the employee to report to work on time and the success of other similarly situated employees to get to the office will be taken into consideration when permitting individual excusals. Employees have the responsibility of notifying his or her supervisor, or someone designated to receive such a notification, as soon as possible at the beginning of the work day of the circumstances that may prevent them from arriving at work on time. The following will apply in these circumstances:

- A. Even if an office is neither closed nor delayed from opening, an employee may be experiencing difficulty in traveling to work. Such employees may be excused on administrative leave for tardiness for up to two (2) hours after their tour of duty begins. Supervisory concurrence (in local servicing offices, the FLM or designee) must be obtained.
- B. If roads are closed by a local or State Official in the area or county in which an employee resides, but the office is open for all or part of the day, that employee will be placed on administrative leave for the period during which the road closure occurs.
- C. Employees have the responsibility of notifying his or her supervisor, or someone designated to receive such a notification, as soon as possible at the beginning of the work day of the circumstances that may prevent them from arriving at work on time.

SECTION 5: Communications.

Each office should establish methods of communication that will enable employees to be notified of closures or delayed openings before they leave their residences. Whenever possible, the local media should be advised of the office closure or delayed opening. Attempts should also be made to notify customers who have scheduled appointments of the office closure or delayed opening.

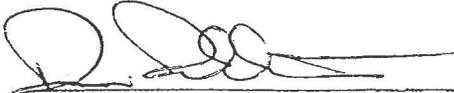
SECTION 5: After Office Closure.

Normally, employees will not be permitted to work after an office closes.

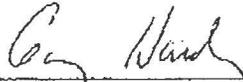
In witness whereof the parties hereto have caused this basic Labor-Management Agreement to be executed on this 5th of July, 2003.

For USDA – FARM SERVICE AGENCY

For American Federation of Government
Employees Local 2831 (AFL-CIO)



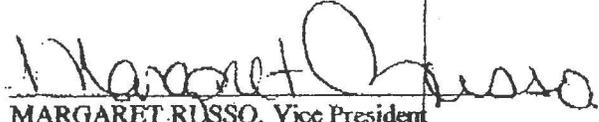
RON ROBBINS, State Executive Director



GARY HARDING, National Representative



FLOYD DUGER, Administrative Officer



MARGARET RUSSO, Vice President



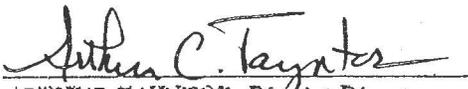
DOUGLAS DONNER, Farm Loan Manager



LISA SMITH, Steward



MICHAEL SLAUNWHITE, District Director



ARTHUR TAYNTOR, District Director

Page 1

MEMORANDUM OF UNDERSTANDING
BETWEEN
DEPARTMENT OF AGRICULTURE AND THE AMERICAN
FEDERATION OF GOVERNMENT EMPLOYEES

This Memorandum of Understanding is between the Department of Agriculture, hereinafter referred to as USDA, and the American Federation of Government Employees, hereinafter referred to as AFGZ.

I. It is agreed that this Agreement is subject to and governed by CSRA.

II. The individual employee of the USDA who is a member of the AFGZ and included within an exclusive unit shall obtain his/her SF-1187, REQUEST AND AUTHORIZATION FOR VOLUNTARY ALLOTMENT OF COMPENSATION FOR PAYMENT OF EMPLOYEE ORGANIZATION DUES, from AFGZ and shall file it with the designated AFGZ representative, who will forward it to the Personnel Office of the Agency. In those cases wherein management and the union disagree regarding the eligibility of an employee for dues withholding, both parties acknowledge that such representation disputes are the sole function of the FLRA and accordingly agree that the dues of such an employee shall be placed in an escrow account pending an appropriate Authority determination. The employee shall be instructed by AFGZ to complete Part A and Part B. No other number must appear in the block provided as "identification Number" except the employee's Social Security Number.

III. Deductions will be made each pay period by the USDA and remittances will be made each pay period to the National Office of the AFGZ. Remittances shall be accompanied by a computer tape, one for each pay period, by Locals, showing the names of the tender employees from whose pay dues were withheld, the amount withheld, the code number of the Local to which each employee member belongs, social security number, and will be summarized to show the number of members for whom dues were withheld, total amount withheld, and the amount due the Local. Each tape will also include the name of each employee member for that Local who previously made an allotment for whom no deduction was made whether due to leave without pay or other cause. Such employee shall be designated with an appropriate explanatory term.

IV. It is agreed that Part A of SF-1187, including the insertion of code numbers of the AFGZ (52) and the appropriate Local number, will be executed by the Financial Officer of the Local to which the employee member belongs or by the National Secretary-Treasurer of the AFGZ, if the member is a member-at-large. The amount so certified shall be the amount of the regular dues (exclusive of initiation fees, assessments, back dues, fines and similar charges and fees). One standard amount for all employees or different amounts of dues for different employees may be specified. If there should be any change in the dues structure or amount, a blanket authorization listing each employee's name and social security number, and the amount of dues to be withheld will be submitted to the appropriate payroll office. The listing will be identified by labor organization and Local codes. Only one such change may normally be made in any period of twelve consecutive months for a given Local.

V. The payroll office of the USDA will terminate an allotment per a request received in accordance with any one of the following:

- (1) as of the beginning of the first full pay period following receipt of notice that exclusive recognition has been withdrawn;

- (2) at the end of the pay period during which an employee member is separated from the USDA;
- (3) at the end of the pay period during which the payroll office receives notice from the AFGE or a Local of the AFGE that the employee member has ceased to be a member in good standing;
- (4) effective September 1, 1978, and each September 1 thereafter for all allotments in effect as of September 1, 1978.
- (5) on the annual anniversary date of each allotment completed after September 1, 1978.

VI. The USDA payroll office will send to the National Financial Officer of the AFGE a copy of each written revocation of an authorization which it receives. Revocation must be submitted to the appropriate Local in writing over the signature of the member on the Standard Form 1188 and must be submitted to the appropriate Personnel Office not earlier than the first day of the month prior to the annual date upon which revocation may be effected in accordance with the above.

Agreed to on the 15th day of January, 1979, and as amended by FLRA decision No. O-PS-1 on April 19, 1979.

Robert F. ...
 Director of Personnel
 US Department of Agriculture

W. H. ...
 National President
 American Federation of
 Government Employees

6/22/79
 Date

TELECOMMUTING EMPLOYEE/SUPERVISOR AGREEMENT

The following constitutes an agreement on the terms and conditions of the Telecommuting agreement between:

Name of Employee

Agency

Name of Supervisor

1. Employee voluntarily agrees to work at the agency-approved alternative workplace indicated below and to follow all applicable policies and procedures. Employee recognizes that the telecommuting arrangement is not an employee entitlement but an additional method the agency may approve to accomplish work. The terms of this agreement will be reviewed on an annual basis.
2. Employee's official tour of duty will be: _____
Employee will be working at the alternative worksite on the following days: _____

3. Employee's official duty station is located: _____
The alternative worksite is located: _____
A Self-Certification Safety Checklist has been satisfactorily completed and is attached to this agreement.
4. All pay, special salary rates, leave and travel entitlements will be based on the employee's official duty station.
5. Unless otherwise instructed, Employee agrees to perform official duties only at the regular office or agency-approved alternative worksite. Employee agrees not to conduct personal business while in official duty status at the alternative worksite, for example, caring for dependents or making home repairs.
6. Employee's timekeeper will have a copy of the employee's scheduled telecommuting work hours. Employee's time and attendance will be recorded as if performing duties at the official duty station. Employee will record time and attendance on SCA-4070A, Time and Attendance Record, or an approved agency format, and forward it bi-weekly to their timekeeper. The method of reporting time and attendance does not obviate the employee's obligation to timely certify the records as true and accurate.
7. Employees must obtain supervisory approval before taking leave in accordance with

established office procedures. By signing this form, employee agrees to follow established procedures for requesting and obtaining approval of leave.

8. Employee will continue to work in pay status while working at alternative worksite. If employee works overtime that has been ordered and approved in advance, s/he will be compensated in accordance with applicable law, rule and regulation. The employee understands that the supervisor will not accept the results of unapproved overtime work and will act vigorously to discourage it. By signing this form, employee agrees that failing to obtain proper approval for overtime work may result in his/her removal from telecommuting or other appropriate action.
9. Employee agrees to protect any Government-owned equipment and to use the equipment only for official purposes. The agency agrees to install, service, and maintain any Government-owned equipment issued to the telecommuting employee. The employee agrees to install, service, and maintain any personal equipment used. The agency agrees to provide the employee with all necessary office supplies and also reimburse the employee for business-related long distance telephone calls.
10. Provided the employee is given advance notice (normally 24 hours), the employee agrees to permit inspections by the Government of the employee's alternative worksite at periodic intervals during the employee's normal working hours to ensure proper maintenance of Government-owned property and worksite conformance with safety standards and other specifications in these guidelines.
11. The Government will not be liable for damages to an employee's personal or real property during the course of performance of official duties or while using Government equipment in the employee's residence, except to the extent the Government is held liable by the Federal Tort Claims Act claims or claims arising under the Military Personnel and Civilian Employees Claims Act.
12. The Government will not be responsible for operating costs, home maintenance, or any other incidental costs (e.g., utilities) whatsoever, associated with the use of the employee's residence. By participating in the Telecommuting program, the employee does not relinquish any entitlement to reimbursement for authorized expenses incurred while conducting business for the Government, as provided for by statute and implementing regulations.
13. Employee is covered under Federal Employee's Compensation Act if injured in the course of actually performing official duties at the official duty station or the alternative worksite. Any accident or injury occurring at the alternative worksite must be reported immediately to the supervisor. Subsequently, the supervisor must investigate immediately and take appropriate action.
14. Employee will meet with the supervisor to receive assignments and to review

completed work as requested.

15. Employee agrees to complete all assigned work according to guidelines and standards in the employee performance plan. The employee agrees to provide regular reports if required by the supervisor to help judge performance. The employee understands that a decline in performance may be grounds for canceling the alternative worksite arrangement.
16. Employee's performance must be fully successful or equivalent.
17. Employee will apply approved safeguards to protect Government/agency records from unauthorized disclosure or damage and will comply with the Privacy Act requirements set forth in the Privacy Act of 1974, P.L. 93-579, codified at section 552a, title 5 U.S.C.
18. An employee's involvement in the telecommuting program is voluntary and may be discontinued by the employee or the supervisor at anytime with appropriate notice (normally 2 weeks). Management may remove an employee from the program if performance declines, the employee violates the terms of the telecommuting agreement or the program no longer benefits the organization's needs, without advance notice.
19. Employee agrees to limit his/her performance of his/her officially assigned duties to his/her official duty station or to agency approved alternative worksite. Failure to comply with this provision may result in loss of pay, termination of the telecommuting arrangement, and/or other appropriate disciplinary action.

Supervisor

Date

Employee

Date

Second-line Supervisor

Date

Self-certification Safety Checklist for Home-based Telecommuters

The following checklist is designed to assess the overall safety of your alternative worksite. Please read and complete the self-certification safety checklist. Upon completion, you and your supervisor should sign and date the checklist in the space provided.

Name: _____ Organization: _____

Address: _____ City/State: _____

Business Telephone: _____ Telecommuting Coordinator: _____

The alternate duty station is _____

Describe the designed work area in the alternate duty station.

A. Workplace Environment

1. Are temperature, noise, ventilation and lighting levels adequate for maintaining normal level of job performance? Yes • No •
2. Are all stairs with four or more steps equipped with handrails? Yes • No •
3. Are all circuit breakers and /or fuses in the electrical panel labeled as to intended service? Yes • No •
4. Do circuit breakers clearly indicate if they are in the open or closed position? Yes • No •
5. Is all electrical equipment free of recognized hazards that would cause physical harm (frayed wires, bare conductors, loose wires, flexible wires running through walls, exposed wires to the ceiling)? Yes • No •
6. Will the building's electrical system permit the grounding of electrical equipment? Yes • No •
7. Are aisles, doorways, and corners free of obstructions to permit visibility and movement? Yes • No •
8. Are file cabinets and storage closets arranged so drawers and doors do not open into walkways? Yes • No •
9. Do chairs have any loose casters (wheels) and are the rungs and legs of the chairs sturdy? Yes • No •

- 10. Are the phone lines, electrical cords, and extension wires secured under a desk or alongside a baseboard? Yes • No •
- 11. Is the office space neat, clean, and free of excessive amounts of combustibles? Yes • No •
- 12. Are floor surfaces clean, dry, level and free of worn or frayed seams? Yes • No •
- 13. Are carpets well secured to the floor and free of frayed or worn seams? Yes • No •
- 14. Is there enough light for reading? Yes • No •

B. Computer Workstation (if applicable)

- 15. Is your chair adjustable? Yes • No •
- 16. Do you know how to adjust your chair? Yes • No •
- 17. Is your back adequately supported by a backrest? Yes • No •
- 18. Are your feet on the floor or fully supported by a footrest? Yes • No •
- 19. Are you satisfied with the placement of your monitor and keyboard? Yes • No •
- 20. Is it easy to read the text on your screen? Yes • No •
- 21. Do you need a document holder? Yes • No •
- 22. Do you have enough leg room at your desk? Yes • No •
- 23. Is the screen free from noticeable glare? Yes • No •
- 24. Is the top of the screen eye level? Yes • No •
- 25. Is there space to rest the arms while not keying? Yes • No •
- 26. When keying, are your forearms close to parallel with the floor? Yes • No •
- 27. Are your wrists fairly straight when keying? Yes • No •

____ Employee's Signature Date

____ Supervisor's Signature Date
Approved • Disapproved

Exhibit 3

Request for Official Time

Part A – To be completed by Union Representative

Union Representative's Name: _____

I hereby request official time on _____ from _____ am/pm to _____ am/pm. (This is an estimate of official time needed.)

- Purpose:**
- Grievance (see below)
 - Mid-Term Bargaining
 - Training (attach documentation)
 - Contract Negotiations
 - Consultation with Bargaining Unit Member
 - Other _____

Union Representative's Signature: _____

Date: _____

Part B – To be completed by Authorizing Official

Request: Approved _____ Denied _____

Reason: _____

Authorizing Official's Signature: _____

Date: _____

Part C – To be completed by Union Rep upon completion of representational duties

Date/time Official Time Started: _____

Date/time Ended: _____

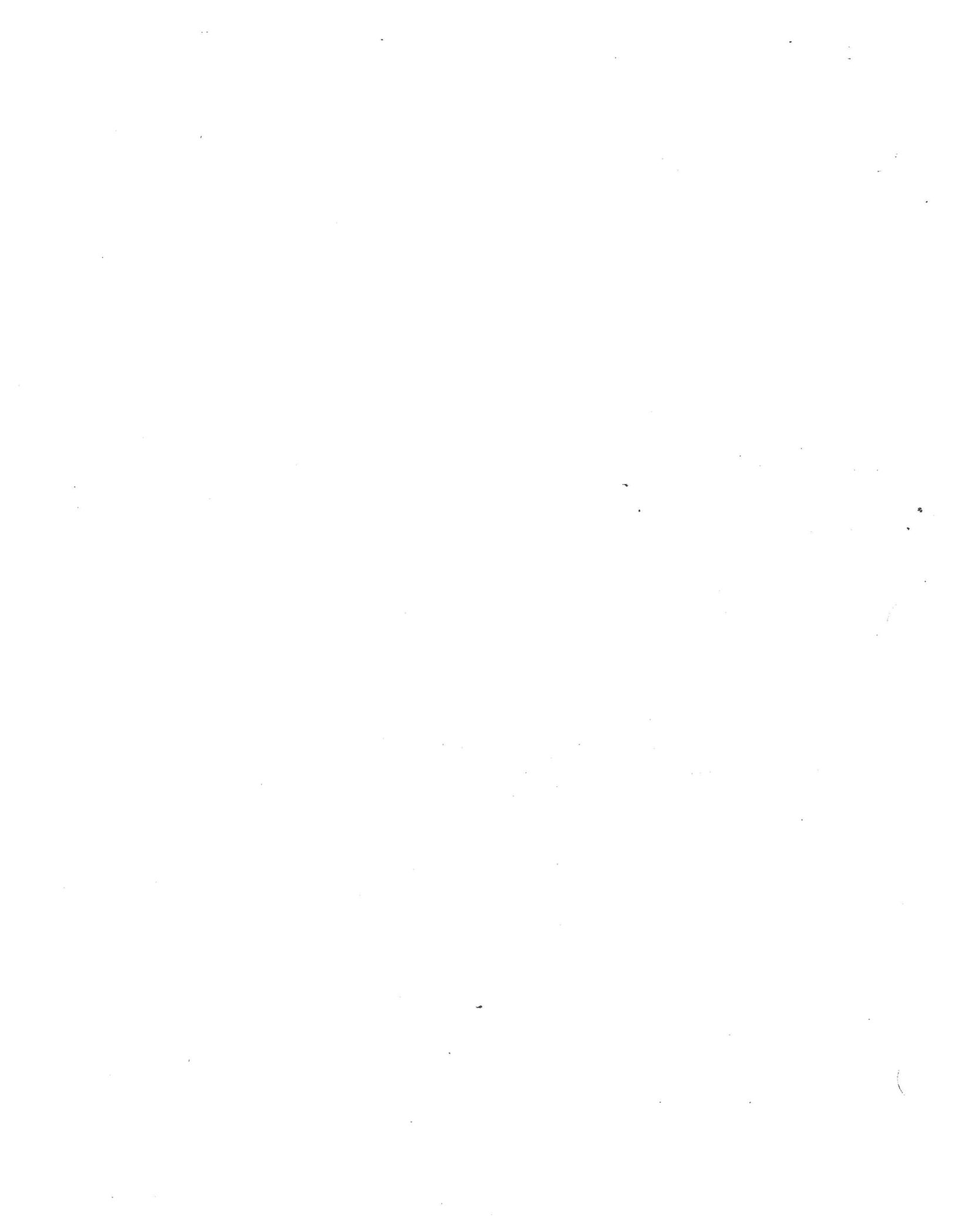
am/pm

am/pm

Amount of Time Used (days/hours/minutes): _____

Union Representative's Signature: _____

Date: _____



MEMORANDUM OF UNDERSTANDING
BETWEEN
DEPARTMENT OF AGRICULTURE AND THE AMERICAN
FEDERATION OF GOVERNMENT EMPLOYEES

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V. The payroll office of the USDA will terminate an allotment per a request received in accordance with any one of the following:

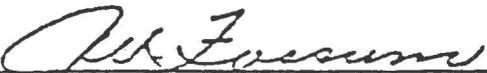
- (1) as of the beginning of the first full pay period following receipt of notice that exclusive recognition has been withdrawn;



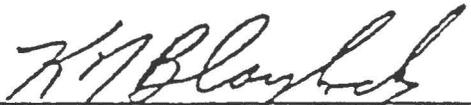
- (2) at the end of the pay period during which an employee member is separated from the USDA;
- (3) at the end of the pay period during which the payroll office receives notice from the AFGE or a Local of the AFGE that the employee member has ceased to be a member in good standing;
- (4) effective September 1, 1979, and each September 1 thereafter for all allotments in effect as of September 1, 1978.
- (5) on the annual anniversary date of each allotment completed after September 1, 1978.

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Agreed to on the 15th day of January, 1979, and as amended by FLRA decision No. O-PS-1 on April 19, 1979.



Director of Personnel
US Department of Agriculture



National President
American Federation of
Government Employees

6/22/79
Date

The logo for the Federal Labor Relations Authority (FLRA) is displayed vertically in a dark, textured rectangular box. The letters 'F', 'L', 'R', and 'A' are stacked from top to bottom in a white, serif font.

[[Home](#)] [[Decisions](#)] [[Search](#)] [[Site Map](#)]

**TITLE 5 OF THE UNITED STATES CODE
GOVERNMENT ORGANIZATION AND EMPLOYEES
PART III--EMPLOYEES
SUBPART F--LABOR-MANAGEMENT AND
EMPLOYEE RELATIONS
CHAPTER 71
LABOR-MANAGEMENT RELATIONS**

**SUBCHAPTER I--
GENERAL PROVISIONS**

Sec.

- 7101. Findings and purpose.
- 7102. Employees' rights.
- 7103. Definitions; application.
- 7104. Federal Labor Relations Authority.
- 7105. Powers and duties of the Authority.
- 7106. Management rights.

**SUBCHAPTER II--
RIGHTS AND DUTIES OF AGENCIES AND
LABOR ORGANIZATIONS**

- 7111. Exclusive recognition of labor organizations.
- 7112. Determination of appropriate units for labor organization representation.
- 7113. National consultation rights.
- 7114. Representation rights and duties.
- 7115. Allotments to representatives.
- 7116. Unfair labor practices.
- 7117. Duty to bargain in good faith; compelling need; duty to consult.
- 7118. Prevention of unfair labor practices.
- 7119. Negotiation impasses; Federal Service Impasses Panel.
- 7120. Standards of conduct for labor organizations.

**SUBCHAPTER III--
GRIEVANCES, APPEALS, AND REVIEW**

- 7121. Grievance procedures.
- 7122. Exceptions to arbitral awards.
- 7123. Judicial review; enforcement.



"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"Sec.

"7131. Official time.

"7132. Subpenas.

"7133. Compilation and publication of data.

"7134. Regulations.

"7135. Continuation of existing laws, recognitions, agreements, and procedures.

"SUBCHAPTER I—GENERAL PROVISIONS

5 USC 7101.

"§ 7101. Findings and purpose

"(a) The Congress finds that—

"(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

"(A) safeguards the public interest,

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

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

"(2) 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.

"(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

5 USC 7102.

"§ 7102. Employees' rights

"Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

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

"(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

5 USC 7103.

"§ 7103. Definitions; application

"(a) For the purpose of this chapter—

"(1) 'person' means an individual, labor organization, or agency;

"(2) 'employee' means an individual—

"(A) employed in an agency; or

"(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include—

"(i) an alien or noncitizen of the United States who occupies a position outside the United States;

"(ii) a member of the uniformed services;

"(iii) a supervisor or a management official;

"(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the Agency for International Development, or the International Communication Agency; or

"(v) any person who participates in a strike in violation of section 7311 of this title;

5 USC 7311.

"(3) 'agency' means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans' Canteen Service, Veterans' Administration), the Library of Congress, and the Government Printing Office, but does not include—

5 USC 2105.

"(A) the General Accounting Office;

"(B) the Federal Bureau of Investigation;

"(C) the Central Intelligence Agency;

"(D) the National Security Agency;

"(E) the Tennessee Valley Authority;

"(F) the Federal Labor Relations Authority;

or

"(G) the Federal Service Impasses Panel;

"(4) 'labor organization' means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—

"(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

"(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

"(C) an organization sponsored by an agency; or

"(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

"(5) 'dues' means dues, fees, and assessments;

"(6) 'Authority' means the Federal Labor Relations Authority described in section 7104(a) of this title;

"(7) 'Panel' means the Federal Service Impasses Panel described in section 7119(c) of this title;

"(8) 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

“(9) ‘grievance’ means any complaint—

“(A) by any employee concerning any matter relating to the employment of the employee;

“(B) by any labor organization concerning any matter relating to the employment of any employee; or

“(C) by any employee, labor organization, or agency concerning—

“(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

“(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

“(10) ‘supervisor’ means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term ‘supervisor’ includes only those individuals who devote a preponderance of their employment time to exercising such authority;

“(11) ‘management official’ means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;

“(12) ‘collective bargaining’ means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;

“(13) ‘confidential employee’ means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

“(14) ‘conditions of employment’ means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

“(A) relating to political activities prohibited under subchapter III of chapter 73 of this title;

“(B) relating to the classification of any position; or

“(C) to the extent such matters are specifically provided for by Federal statute;

“(15) ‘professional employee’ means—

“(A) an employee engaged in the performance of work—

“(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction

and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

“(ii) requiring the consistent exercise of discretion and judgment in its performance;

“(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

“(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

“(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A) (i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

“(16) ‘exclusive representative’ means any labor organization which—

“(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

“(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit—

“(i) on the basis of an election, or

“(ii) on any basis other than an election, and continues to be so recognized in accordance with the provisions of this chapter;

“(17) ‘firefighter’ means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

“(18) ‘United States’ means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

“(b) (1) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

Presidential
order.

“(A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

“(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

“(2) The President may issue an order suspending any provision of this chapter with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security.

Presidential
order.

5 USC 7104.

“§ 7104. Federal Labor Relations Authority

“(a) The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

“(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority.

“(c) (1) One of the original members of the Authority shall be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years. Thereafter, each member shall be appointed for a term of 5 years.

“(2) Notwithstanding paragraph (1) of this subsection, the term of any member shall not expire before the earlier of—

“(A) the date on which the member's successor takes office, or

“(B) the last day of the Congress beginning after the date on which the member's term of office would (but for this subparagraph) expire.

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

“(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

“(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

“(f) (1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed at any time by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law.

“(2) The General Counsel may—

“(A) investigate alleged unfair labor practices under this chapter,

“(B) file and prosecute complaints under this chapter, and

“(C) exercise such other powers of the Authority as the Authority may prescribe.

“(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

5 USC 7105.

“§ 7105. Powers and duties of the Authority

“(a) (1) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

“(2) The Authority shall, to the extent provided in this chapter and in accordance with regulations prescribed by the Authority—

“(A) determine the appropriateness of units for labor organization representation under section 7112 of this title;

“(B) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative

Report to
President

by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of this title relating to the according of exclusive recognition to labor organizations;

“(C) prescribe criteria and resolve issues relating to the granting of national consultation rights under section 7113 of this title;

“(D) prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under section 7117(b) of this title;

“(E) resolves issues relating to the duty to bargain in good faith under section 7117(c) of this title;

“(F) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under section 7117(d) of this title;

“(G) conduct hearings and resolve complaints of unfair labor practices under section 7118 of this title; Hearings.

“(H) resolve exceptions to arbitrator's awards under section 7122 of this title; and

“(I) take such other actions as are necessary and appropriate to effectively administer the provisions of this chapter.

“(b) The Authority shall adopt an official seal which shall be judicially noticed.

“(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

“(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions. The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary. 5 USC 3105.

“(e) (1) The Authority may delegate to any regional director its authority under this chapter—

“(A) to determine whether a group of employees is an appropriate unit;

“(B) to conduct investigations and to provide for hearings;

“(C) to determine whether a question of representation exists and to direct an election; and

“(D) to supervise or conduct secret ballot elections and certify the results thereof.

“(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

“(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of action. The Authority may

affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of—

“(1) the date of the action; or

“(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

“(g) In order to carry out its functions under this chapter, the Authority may—

Hearings.

“(1) hold hearings;

Administer oaths.

“(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and

“(3) may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action it considers appropriate to carry out the policies of this chapter.

“(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

“(i) In the exercise of the functions of the Authority under this title, the Authority may request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or policy directives issued by the Office of Personnel Management in connection with any matter before the Authority.

5 USC 7106.

“§ 7106. Management rights

“(a) Subject to subsection (b) of this section, nothing in this chapter 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 the personnel by which agency operations shall be conducted;

“(C) with respect to filling positions, to make selections for appointments from—

“(i) among properly ranked and certified candidates for promotion; or

“(ii) 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.

“SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

“§ 7111. Exclusive recognition of labor organizations

5 USC 7111.

“(a) An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election.

“(b) If a petition is filed with the Authority—

Petition.

“(1) by any person alleging—

“(A) in the case of an appropriate unit for which there is no exclusive representative, that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

“(B) in the case of an appropriate unit for which there is an exclusive representative, that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

“(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Authority finds on the record of the hearing that a question of representation exists, the Authority shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

Hearing.

Election.

“(c) A labor organization which—

“(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

“(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

“(3) has submitted other evidence that it is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

“(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such election, which shall include rules allowing employees eligible to vote the opportunity to choose—

“(1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

“(2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

“(e) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

“(f) Exclusive recognition shall not be accorded to a labor organization—

“(1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;

“(2) in the case of a petition filed pursuant to subsection (b)(1)(A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;

“(3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless—

“(A) the collective bargaining agreement has been in effect for more than 3 years, or

“(B) the petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration date of the collective bargaining agreement; or

“(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

“(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

5 USC 7112.

“§ 7112. Determination of appropriate units for labor organization representation

“(a) (1) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of, the agency involved.

“(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes—

“(1) except as provided under section 7135(a)(2) of this title, any management official or supervisor;

“(2) a confidential employee;

Part 1215.

"(3) an employee engaged in personnel work in other than a purely clerical capacity;

"(4) an employee engaged in administering the provisions of this chapter;

"(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

"(6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

"(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

"(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization—

"(1) which represents other individuals to whom such provision applies; or

"(2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

"(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

"§ 7113. National consultation rights

5 USC 7113.

"(a) (1) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

"(b) (1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall—

"(A) be informed of any substantive change in conditions of employment proposed by the agency, and

"(B) be permitted reasonable time to present its views and recommendations regarding the changes.

"(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization—

"(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

"(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

"(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

5 USC 7114.

"§ 7114. Representation rights and duties

"(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

"(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

"(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

"(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if—

"(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

"(ii) the employee requests representation.

"(3) Each agency shall annually inform its employees of their rights under paragraph (2) (B) of this subsection.

"(4) Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

"(5) The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from—

"(A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

"(B) exercising grievance or appellate rights established by law, rule, or regulation; except in the case of grievance or appeal procedures negotiated under this chapter.

"(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—

"(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

"(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

"(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

"(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data—

"(A) which is normally maintained by the agency in the regular course of business;

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

“(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

“(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

“(c) (1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.

“(2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

“(3) If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

“(4) A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the agency.

“§ 7115. Allotments to representatives

5 USC 7115.

“(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

“(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when—

“(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

“(2) the employee is suspended or expelled from membership in the exclusive representative.

“(c) (1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

“(2) (A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

“(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

5 USC 7116.

"§ 7116. Unfair labor practices

"(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency—

"(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

"(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

"(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

"(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

"(5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

"(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

"(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

"(8) to otherwise fail or refuse to comply with any provision of this chapter.

"(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization—

"(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

"(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter:

"(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

"(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

"(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;

"(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

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

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

"(8) to otherwise fail or refuse to comply with any provision of this chapter.

Note, p. 1114.

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

"(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure—

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

"(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

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

"(e) The expression of any personal view, argument, opinion or the making of any statement which—

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

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

"(3) informs employees of the Government's policy relating to labor-management relations and representation, shall not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter.

§ 7117. Duty to bargain in good faith; compelling need; duty to consult 5 USC 7117.

"(a) (1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

"(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

"(3) Paragraph (2) of the subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

“(b) (1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a) (3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

“(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if—

“(A) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

“(B) the Authority determines that a compelling need for a rule or regulation does not exist.

Hearing.

“(3) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.

“(4) The agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

“(c) (1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

Appeal.

“(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by—

“(A) filing a petition with the Authority; and

“(B) furnishing a copy of the petition to the head of the agency.

Petition.

“(3) On or before the 30th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2) (B) of this subsection, the agency shall—

“(A) file with the Authority a statement—

“(i) withdrawing the allegation; or

“(ii) setting forth in full its reasons supporting the allegation; and

“(B) furnish a copy of such statement to the exclusive representative.

“(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3) (B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

“(5) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall not include the General Counsel as a party.

“(6) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

“(d) (1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation

rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

"(2) A labor organization having consultation rights under paragraph (1) of this subsection shall—

"(A) be informed of any substantive change in conditions of employment proposed by the agency, and

"(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

"(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization—

"(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

"(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

"§ 7118. Prevention of unfair labor practices

5 USC 7118.

"(a) (1) If any agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

"(2) Any complaint under paragraph (1) of this subsection shall contain a notice—

Complaint

"(A) of the charge;

"(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the authority and designated for such purpose); and

Hearing.

"(C) of the time and place fixed for the hearing.

"(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

"(4) (A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

"(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of—

"(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

"(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period, the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

"(5) The General Counsel may prescribe regulations providing for

Regulations.

informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

Hearing.

"(6) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

5 USC 551.

Transcript.

"(7) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order—

"(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

"(B) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

"(C) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

"(D) including any combination of the actions described in subparagraphs (A) through (C) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

"(8) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

Rules and regulations, interpretation.

"(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request, in accordance with the provisions of section 7105(i) of this title, from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management.

5 USC 7119.

"§ 7119. Negotiation impasses; Federal Service Impasses Panel

"(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall provide services and assistance.

“(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse—

“(1) either party may request the Federal Service Impasses Panel to consider the matter, or

“(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel.

“(c) (1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

“(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform the duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations.

Membership.

“(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

“(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

“(5) (A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either—

Investigation.

“(i) recommend to the parties procedures for the resolution of the impasse; or

“(ii) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

“(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may—

“(i) hold hearings;

“(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and

“(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

“(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

5 USC 7120.

“§ 7120. Standards of conduct for labor organizations

“(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

“(1) the maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

“(2) the exclusion from office in the organization of persons affiliated with communist or other totalitarian movements and persons identified with corrupt influences;

“(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

“(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

“(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that—

“(1) the organization has been suspended or expelled from, or is subject to other sanction, by a parent labor organization, or federation of organizations with which it had been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

“(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

Filing of reports.

“(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

Regulations.

“(d) The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section.

“(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential

employee, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

“(f) In the case of any labor organization which by omission or commission has willfully and intentionally, with regard to any strike, work stoppage, or slowdown, violated section 7116(b)(7) of this title, the Authority shall, upon an appropriate finding by the Authority of such violation—

Strike.

“(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

“(2) take any other appropriate disciplinary action.

“SUBCHAPTER III—GRIEVANCES

“§ 7121. Grievance procedures

5 USC 7121.

“(a)(1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d) and (e) of this section, the procedures shall be the exclusive procedures for resolving grievances which fall within its coverage.

“(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

“(b) Any negotiated grievance procedure referred to in subsection (a) of this section shall—

“(1) be fair and simple.

“(2) provide for expeditious processing, and

“(3) include procedures that—

“(A) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

“(B) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

“(C) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

“(c) The preceding subsections of this section shall not apply with respect to any grievance concerning—

“(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);

5 USC 7321.

“(2) retirement, life insurance, or health insurance;

“(3) a suspension or removal under section 7532 of this title;

“(4) any examination, certification, or appointment; or

“(5) the classification of any position which does not result in the reduction in grade or pay of an employee.

“(d) An aggrieved employee affected by a prohibited personnel practice under section 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option

Ante, p. 1114.

under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

Anne, p. 1140.

Anne, p. 1133,
1136.

Anne, p. 1138.

"(e) (1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

"(2) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701 (c) (1) of this title, as applicable.

"(f) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

Anne, p. 1143.

5 USC 7122.

"§ 7122. Exceptions to arbitral awards

"(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration (other than an award relating to a matter described in section 7121 (f) of this title). If upon review the Authority finds that the award is deficient—

"(1) because it is contrary to any law, rule, or regulation; or

"(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

“(b) If no exception to an arbitrator’s award is filed under subsection (a) of this section during the 30-day period beginning on the date of such award, the award shall be final and binding. An agency shall take the actions required by an arbitrator’s final award. The award may include the payment of backpay (as provided in section 5596 of this title).

“§ 7123. Judicial review; enforcement

5 USC 7123.

“(a) Any person aggrieved by any final order of the Authority other than an order under—

“(1) section 7122 of this title (involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or

“(2) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority’s order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

“(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

Petition.

“(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority’s order unless the court specifically orders the stay. Review of the Authority’s order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole,

5 USC 706.

shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

“(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the agency to carry out its essential functions or if the Authority fails to establish probable cause that an unfair labor practice is being committed.

“SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

5 USC 7131.

“§ 7131. Official time

“(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

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

“(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

“(d) Except as provided in the preceding subsections of this section—

“(1) any employee representing an exclusive representative, or

“(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

5 USC 7132.

“§ 7132. Subpenas

“(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may—

5 USC 3105.

“(1) issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

“(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

No subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

“(b) In the case of contumacy or failure to obey a subpoena issued under subsection (a) (1) of this section, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

“(c) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

“§ 7133. Compilation and publication of data

5 USC 7133.

“(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

“(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title.

5 USC 552, 552a.

5 USC 7134.

“§ 7134. Regulations

“The Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Assistant Secretary of Labor for Labor Management Relations, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. Provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

“§ 7135. Continuation of existing laws, recognitions, agreements, and procedures

5 USC 7135.

“(a) Nothing contained in this chapter shall preclude—

“(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

“(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

“(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions

5 USC 7301 note,
7701 note.

(a) Nothing contained in this chapter shall preclude--

(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter.

[[Home](#)] [[Decisions](#)] [[Search](#)] [[Site Map](#)]



of this chapter or by regulations or decisions issued pursuant to this chapter.”

BACKPAY IN CASE OF UNFAIR LABOR PRACTICES AND GRIEVANCES

SEC. 702. Section 5596(b) of title 5, United States Code is amended to read as follows:

“(b) (1) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee—

“(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

“(i) an amount equal to all or any part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period; and

“(ii) reasonable attorney fees related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, shall be awarded in accordance with standards established under section 7701 (g) of this title; and

“(B) for all purposes, is deemed to have performed service for the agency during that period, except that—

“(i) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

“(ii) annual leave credited under clause (i) of this subparagraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

“(2) This subsection does not apply to any reclassification action nor authorize the setting aside of an otherwise proper promotion by a selecting official from a group of properly, ranked and certified candidates.

“(3) For the purpose of this subsection, ‘grievance’ and ‘collective bargaining agreement’ have the meanings set forth in section 7103 of this title, ‘unfair labor practice’ means an unfair labor practice described in section 7116 of this title, and ‘personnel action’ includes the omission or failure to take an action or confer a benefit.”

Anne, p. 1191.

Anne, p. 1138.

5 USC 5551,
5552.

Anne, p. 1192.

