



February 16, 2017

Departmental
Management

Office of the
Assistant Secretary
for Administration

Office of Human
Resources
Management

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TO: Dr. Chavonda Jacobs-Young, Administrator
Agricultural Research Service, (ARS)

FROM: Daniel M. Kline, Branch Chief *Daniel M. Kline*
Labor Relations Division
Office of Human Resources Management

SUBJECT: Review of the Resubmitted Rollover Collective Bargaining Agreement (CBA) Between the Agricultural Research Service, Eastern Utilization Research and Development Division and the American Federation of Government Employees (AFGE) Local 1331

By memorandum, dated January 18, 2017, this office transmitted to the parties an initial agency head review disapproving the Collective Bargaining Agreement (CBA) submitted to our office on December 29, 2016. Specific language contained within the CBA was determined not in conformance with applicable law, rule and regulation. On February 14, 2017, this office received the renegotiated CBA between the parties adopting the Department's recommended changes.

On behalf of the Secretary of Agriculture and in accordance with 5 U.S.C. § 7114(c), the Department has conducted an Agency Head Review of the renegotiated provisions executed on February 10, 2017. After review of the renegotiated provisions, the Department finds them to be consistent with current applicable law, rule and regulation. Therefore, the CBA shall have the effective date of this memorandum.

Enclosure

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ARTICLE 1

PREAMBLE

Pursuant to the labor management policy as set forth in 5 USC, Chapter 71, these articles, together with any supplements or amendments as may be made from time to time, constitute an agreement between the Eastern Regional Research Center (ERRC), North East Area (NEA), Agricultural Research Service (ARS), United States Department of Agriculture (USDA), Philadelphia, Pennsylvania, hereinafter called the Center, and the American Federation of Government Employees (AFGE), Local 1331, hereinafter called the Union. The Center and the Union are referred to as the Parties to this Agreement.

The Center and the Union agree that the well-being of employees and the efficient administration of the Government are benefited by providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment. This collaborative partnership will foster trust and open communication, provide a positive work environment, and encourage employee productivity and development in their performance of mission goals.

ARTICLE 2

RECOGNITION

General

This Agreement is made under authority contained in 5 USC, Chapter 71 and a letter of exclusive recognition dated November 24, 1964, from the Director, USDA, ARS, **Eastern Utilization Research and Development Division**, to the President, Local 1331, American Federation of Government Employees.

Section 1

The bargaining unit will be designated to include: all professional and nonprofessional employees of Eastern Regional Research Center (ERRC) except, any management official, supervisor and employees described in 5 USC, 7112 (b) excluding confidential employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials and supervisors as defined in Title 5, USC, 7103.

Section 2

A. As the sole and exclusive representative, the Union is entitled to act for, speak for, and to negotiate agreements covering all employees in the bargaining unit. The Union is responsible for representing the interests of all employees in the bargaining unit regardless of their status as dues paying members.

B. Due to the Union's exclusive recognition, the Center will not deal directly with Bargaining Unit Employees (BUEs) on matters such as working conditions, personnel policy or practices, or by engaging in formal discussions without Union notification. Management has the right to direct work assignments and engage in performance discussions with employees. The Center recognizes the Union as the exclusive representative for all eligible employees within the bargaining unit.

ARTICLE 3

CONTROLLING AUTHORITY

Relationship to Laws and Regulations

A. In the administration of all matters covered by this Agreement, officials and employees shall be governed by applicable Federal laws, government-wide rules, and regulations in existence at the time this agreement is signed. The Parties recognize that these may be subsequently modified.

B. Changes in government-wide rules, regulation, law or directives, may be subject to negotiations in accordance with 5 USC, Chapter 71.

C. Where any Agency regulations conflicts with this Agreement, the Agreement shall govern.

ARTICLE 4
MANAGEMENT RIGHTS

Section 1- Rights and Obligations of the Employer

A. This article shall be administered in accordance with 5 USC, Chapter 71, appropriate government-wide rules, and the terms of this agreement. Management officials of the Agency retain the following rights outlined in 5 USC, 7106, Management Rights; these include, but are not limited to the following:

- (1) determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and
- (2) in accordance with applicable laws;
 - (a) hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or to 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 the 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; and
 - (ii) any other appropriate source; and
 - (d) take whatever actions may be necessary to carry out the Agency mission during emergencies.

B. Nothing in this section shall preclude any Agency and/or any labor organization from negotiating:

- (1) At the election of the Agency to negotiate on the numbers, types, 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 effected by the exercise of any authority under this section by such management officials.

ARTICLE 5

EMPLOYEE RIGHTS

General

In an atmosphere of mutual respect, all employees shall be treated fairly and equitably and without discrimination in regard to their political affiliation, Union activity, race, color, religion, national origin, gender, sexual orientation, marital status, age, or non-disqualifying handicapping conditions. Employees will also be afforded proper regard for and protection of their privacy and constitutional rights. It is therefore agreed that Management will endeavor to establish working conditions which will be conducive to enhancing and improving employee morale and efficiency.

Section 1

As provided by 5 USC, 7102, each employee will 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 will 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 the appropriate authorities, and
- (2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter."

Section 2 - Weingarten Rights

An employee has the right to be represented by the Union during any examination of the employee by a representative of the Agency in connection with an investigation if he or she reasonably believes that the examination may result in disciplinary action against him or her and he or she requests representation.

Section 3

Nothing in this Agreement will require an employee to become or to remain a member of a labor organization or to pay money to the organization except pursuant to a voluntary written authorization by a member for the payment of dues through payroll deduction.

Section 4

Workload permitting, employees will be allowed to leave their work places for short periods of time to meet with Union representative(s) regarding work related matters and concerns.

Section 5

Management will provide to new bargaining unit employees, along with documents provided by the Center, a package of Union material (i.e. a list of AFGE Local 1331 Officers and/or representatives) provided by the Union. It is understood that the Union will maintain an adequate supply of Union material for distribution by the Center.

ARTICLE 6

UNION RIGHTS

Section 1 - Exclusive Representation

Pursuant to 5 USC, 7114 (a)(1), the Center recognizes the Union as the exclusive representative of the employees in the unit certified by the Federal Labor Relations Authority (FLRA) in Case No. ____ [Union's Certification]. As such, the Union is entitled to act for and negotiate collective bargaining agreements covering all employees in the unit. The Union is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

Section 2 - Union Representatives

The Union will designate its own representative(s) in discussions which affect the working conditions of an employee(s) in the collective bargaining unit at the Center. The Union will notify the Center upon request the name, title and work location of its assigned representative(s) and their alternate(s).

Section 3 - Duties of Union Representative

A. Union representatives will be permitted reasonable official time when they would otherwise be in a duty status to perform representational activities.

B. Representational activities are:

A. attendance at meetings with management concerning personnel policies and practices, working conditions and grievances (except negotiations);

B. receiving potential employee grievances, making appropriate inquiries and presenting grievances to management.

C. The Parties agree that, except as elsewhere authorized in this Agreement, Article 7, Official Time, official time for representational activities will be limited to the items specified in this section.

D. Workloads permitting, supervisors will allow an Union representative(s) to leave their work locations or their regular duties for representational purposes. Prior to leaving their work locations or duties, the stewards or representatives will inform their supervisors of where they can be reached by telephone and the length of time they anticipate being away.

E. When a Union representative(s) enters a work area for representational purposes, he/she will request permission of the supervisor of the area he/she is entering. If the representative is not permitted to contact the employee he/she wishes to see, the supervisor will advise the representative(s) of the reasons and the time when the employee will be available.

F. Recognized Union officials and representatives will report all official time used for representational activities by recording their time in the official timekeeping system. The time utilized should be recorded in 15 minute increments as permitted by the timekeeping system.

G. Union representatives who are not employees of the Center will be admitted to the Center during normal work hours. When entering the Center, Union representatives will be required to follow the current visitors' policy.

Section 4 – Requirements for Union Representatives

All representatives of the Union will be in good standing with AFGE Local 1331.

Section 5 - Formal Discussions

A. Pursuant to 5 USC, 7117(a) (2) (A), the Union shall be given the opportunity to be represented at any formal discussion between one or more employees it represents and one or more representatives of the Center or the Agency concerning any grievance (to include settlement discussions) or any personnel policy or practice or other general condition of employment. This right to be represented does not extend to informal discussions between an employee and a supervisor concerning a personal problem, counseling, or work methods and assignments.

B. The representative designated by the Union will be given advance notice of any formal discussions that are to be held. If that official or designee is not available, the Center and/or the Agency shall contact the Union President. This advance notice will be given unless management has been prevented from doing so due to an emergency. In situations involving a meeting with a large group of employees (such as a meeting with a Research Unit, CRIS Project group or Office), the Union shall receive at least a two (2) business day notice of the meeting.

C. At the start of each formal discussion, the Center management representative will ask any Union representative who may be present to introduce him or herself. Furthermore, the Center management representative will permit the Union representative to ask relevant questions and to present a brief statement before the end of the meeting outlining the Union's position concerning the issues presented by management, and to have full participatory rights during the meeting to the extent accorded to other employees.

Section 6 - Investigatory Examinations (Weingarten Rights)

A. As provided in 5 USC, 7114 (a) (2) (B) and Article 25, Disciplinary and Adverse Actions, the Union has the right to be represented at any examination of an employee in the bargaining unit by a representative of the Center or Agency in connection with an investigation if:

1. The employee reasonably believes that the examination may result in disciplinary action against the employee; and
2. The employee requests representation

B. The Union's Chief Steward and/or President will determine which representative will be assigned to any particular investigatory examination.

C. The Union representative will be given a reasonable amount of time to arrive at the examination. Once the employee requests representation, no further questioning will take place until the representative is present. If the representative is not available due to work schedules, absence or other representational business, the examination will be postponed until the next day.

Section 7 - Access to Information

The Center or the Agency will furnish to the Union, and/or its authorized representatives, upon request, and to the extent not prohibited by law, data concerning the bargaining unit which:

1. Is normally maintained by the Center or Agency in the regular course of business;
2. Is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and
3. Does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

ARTICLE 7

OFFICIAL TIME and DUTY TIME

Section 1 – Purpose

The Parties recognize that good communications are vital to positive and constructive relationships between the Union and Management. These communications should facilitate and encourage the amicable settlement of disputes between employees and Management involving conditions of employment and should contribute to the effective and efficient conduct of public business. They further recognize that this bargaining unit is large, complex, and requires Union coordination of its representational activities at several levels. Thus, official time shall be granted in amounts specified by this Agreement or otherwise negotiated for the purpose of:

1. Handling grievances and other complaints;
2. Handling other representational functions; or
3. Engaging in appropriate lobbying functions.

Section 2 - Duty-Time Activities

A. Union representatives will be on duty time when participating in:

1. Agency/Center initiated committees and forums; and/or
2. Cases in which a Union representative is designated as the employee's representative, preparing or presenting appeals to MSPB.

B. Union representatives serving on committees will be coded as duty time.

NOTE: If a Union representative is chosen by an employee to be a personal representative handling discrimination claims under EEOC procedures, the personal representative is entitled to official time (29 CFR, 1614 605 (b)). Labor statute official time is not permitted for these purposes.

Section 3 - Performance Evaluation

The use of official time, in accordance with this Agreement, will not adversely affect an employee's performance evaluation.

Section 4 – Statutory/Training Official Time

A. The Union will receive a total allotment of 120 hours of statutory official time on an annual basis. There will be no banking or rollover of unused hours.

B. The Union President will assign and monitor the utilization of all official time.

C. The Union representative will receive prior approval from their immediate supervisor or designee to perform representational duties before leaving the work area.

D. The Union representative will be required to record their use of statutory official time in the official time keeping system.

E. The Union representatives will be allowed official time to attend Union sponsored training of mutual interest to the Parties. The total amount of Union sponsored training granted in any calendar year to all Union representatives will be a total allotment of 100 hours.

F. The Parties agree that the allotment of time can be adjusted by mutual agreement.

Section 5 - Allegations of Abuse

Alleged abuses of official time shall be brought to the attention of an appropriate Management official on a timely basis by supervisors and Management officials. The Management official or their designee (normally, the Labor Relations Officer), will then discuss the matter with the Local President and/or District 103 representative as appropriate.

ARTICLE 8

DUES WITHHOLDING

Section 1 - Eligibility - Bargaining Unit Employees (BUEs)

Dues withholding from BUEs shall be administered in accordance with 5 USC, Chapter 71. Any BUE may have dues deducted through payroll deductions. Such deductions will be discontinued only when the employee leaves the unit of recognition, ceases to be a member in good standing of AFGE, or submits a timely revocation form under the procedures of this article.

Section 2 - Union Responsibilities for Bargaining Unit Employees

A. The Union agrees to inform the Agency, in writing, of the following:

1. The dues amount(s) or changes in the dues amount(s),
2. The names of the Union officials responsible for certifying each employee's authorization form, the amount of dues to be withheld, and changes in allotments, and
3. The name and address of the payee to whom the remittance should be made.

B. The Union agrees to notify dues paying members of any increases in dues and to advise them of the reasons for the change.

C. The Union agrees to promptly forward completed and certified form(s) to the appropriate Administrative Office.

Section 3 - Agency Responsibilities for Bargaining Unit Employees

A. It is the responsibility of the Agency to:

1. Process voluntary allotments of dues in accordance with this article and in amounts certified by the Union,
2. Withhold employee dues on a bi-weekly basis, and
3. Transmit remittance to the local allottee designated by the Union in accordance with this article, as expeditiously as possible at the end of each pay period, together with two copies of a listing containing the following information:
 - a. Identification of active employees for whom allotments of dues that have been temporarily stopped and identification of those which are a final deduction because of termination or transfer.

B. The Agency will process the changes and make them effective no later than three (3) pay periods from notification of the change.

C. Electronic transfer of funds is authorized for the transmittal of Union dues.

D. The Agency agrees to withhold Union dues from a back pay award granted to an employee who was terminated and was on dues withholding at the time of a termination. The amount withheld from the back pay award will be calculated from the date of termination until the employee's date of reinstatement. The employee will be made whole and continue in the status quo bargaining unit and dues paying status they were in at date of termination upon their return to duty.

E. The Agency agrees to withhold Union dues from a back pay award to an employee who was on dues withholding at the time of a suspension.

Section 4 - Procedures for Withholding for Bargaining Unit Employees

Bargaining unit members wishing to have their dues withheld by payroll deduction will submit their completed SF-1187 (Request for Payroll Deductions for Labor Organization Dues) to the Union designated officials. These officials will certify the form and include the amount of dues to be withheld. The certified SF-1187 will be forwarded to the appropriate Center Administrative Office for processing. The deduction will become effective at the beginning of the first pay period that begins three (3) or more workdays after the SF-1187 was submitted to the appropriate Administrative Office.

Section 5 - Revocation of Dues

A. The Union or the local servicing personnel office will provide the appropriate designated form to employees upon request. An employee may cancel dues withholding on their anniversary date by submitting the appropriate designated form, timely, to the Union.

B. The Union official will determine the anniversary date of the allotment of dues by referring to the original form. The ending date of the pay period in which the first anniversary date occurs will be entered on the form.

C. Employees may discontinue dues withholding after the one (1) year statutory requirement for dues withholding has been met. The employee is responsible for completing the SF-1188 which can be obtained from the Union Treasurer or their designee. The effective date of revocation will be effective the ending date of the pay period in which the first anniversary date occurs will be entered on the form. The SF-1188 is to be certified by the Union Treasurer or their designee prior to submission for processing.

D. In accordance with AFGE bylaws and constitution BUEs may revoke dues on their anniversary date. Employees are encouraged to begin this process 30 days in advance of their anniversary date.

E. Employees may rejoin the Union by resubmitting a new form. A new one (1) year statutory period for dues withholding will then be established based on the new sign up date.

Section 6 - Costs

All payroll deductions and transmittals will be made at no cost to the Union.

Section 7 – Financial Reports

The Agency will provide a dues report to the Union on a bi-weekly basis.

ARTICLE 9

IDENTIFICATION of UNION OFFICIALS

The Union is permitted to publish and update the names, work locations, and telephone numbers of the Union Officials on the shared drive and the Union bulletin board.

The Union agrees to provide Management and the Labor Relations Officer a current list of names, email, physical addresses, and telephone numbers of its Union Officials on a bi-annual basis (Jan 1 and July 1) and when a change in Union Officials occurs.

ARTICLE 10

OFFICIAL USE OF FACILITIES

Section 1

A. Union Office space will be provided in building 4 (main building). The Union is responsible for ensuring accessibility to its space during normal cleaning and maintenance schedules. However, the Agency retains the right to access the room for internal security purposes and other essential functions.

B. In the absence of an emergency, the Union will be provided advance notice if entrance to the Union office is necessary.

C. The Center will provide the following office equipment: one desk, one desk chair, two locking file cabinets, a bookshelf, a free standing table, and 4 chairs.

D. The Center will provide a computer with internet access, office phone, shredder, printer, fax, and a scanner /copier for the office.

E. The Center will provide routine cleaning and maintenance services as outlined in the existing maintenance contract and its successor.

F. The Union will be granted access to internal mail, teleconference facilities, video conference facilities, video equipment, and other office services routinely used in that work location. The Union will follow the same reservation and use procedures as all other users.

G. The Union may be permitted to use other types of mailing such as express, overnight, registered, certified mail, etc., when required to meet time frames imposed by a third party (i.e. EEOC, arbitrator, FSIP, FLRA). The Union will be required to notify the Administrative Officer (AO) in advance for use of such services.

H. The Union will be given access to conference rooms and auditoriums for meetings requiring that size space. The Union will follow the same reservation and use procedures as all other users.

I. Whenever possible, the Center will make conference rooms available to the Union between the hours of 8:00 a.m. – 4:00 p.m. The Union must request to reserve the space in accordance with Center's established processes.

Section 2 - Bulletin Boards

A. Numbers and location of bulletin boards will be determined jointly between labor and management.

B. Bulletin board(s) will be maintained by the Union.

Section 3

The Parties agree that the Union Officers will follow the Agency's "Limited Personal Use" policy for the use of all Agency provided electronic equipment and the Union may be responsible for payment of excessive fees incurred for the use of such equipment.

Section 4 - Distribution of Literature

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

Section 5 - Directory

The Center agrees to publish the names, location, and phone numbers of the Union office and Union representatives on the internal intranet. The Union will provide the most current information to be published.

Section 6 – Agreement Availability

The Agreement will be available to employees on the Center’s shared drive.

ARTICLE 11

JOINT LABOR – MANAGEMENT COMMITTEE

General

The purpose of the Joint Labor Management Committee (JLMC) is to foster a cooperative, constructive working relationship between employees and management at the Center. The JLMC will work to establish an atmosphere of mutual respect and trust, improve morale and the quality of work life for employees.

Section 1

A JLMC, consisting of equal members representing the Union (Labor) and the Center (Management), one of whom must be the Center Director or their designee to discuss matters related to conditions of employment. The JLMC may meet by mutual agreement. Labor representatives will be on duty time during any JLMC meeting.

Section 2

The Parties agree the charter and the minutes will be available on the Center's intranet.

ARTICLE 12

HOURS OF WORK AND OVERTIME

General

This article shall be administered in accordance with 5 USC, Chapters 61, 5, Code of Federal Regulations (CFR), and this Agreement. The purpose of this article is to prescribe the policies covering hours of work for all BUEs in accordance with applicable law and regulation.

Section 1 – General Provisions/Definitions

A. Normal building operational hours will be 6:00 a.m. to 6:00 p.m., Monday – Friday.

B. Core hours are the hours when the Center expects maximum attendance and is currently from 9:30 a.m. to 11:30 a.m. allowing for flexibility of arrival and exit times for employees.

C. Core hours are the time periods during the workday, workweek or pay period that are within the tour of duty during which an employee covered by a FWS is required to be present for work.

D. Basic work requirement is the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours and compensatory time. For full-time employees, the basic work requirement is 80 hours per biweekly pay period. A part-time employee's basic work requirement is the number of hours the employee is scheduled to work in a biweekly pay period.

E. A Tour of Duty is the hours of a day and the days of a workweek that constitute an employee's regularly scheduled workweek. Under an Alternate Work Schedule (AWS) or other fixed schedule, Tour of Duty is synonymous with basic work requirement.

F. Start time begins when the employee reaches their assigned work area. End time is when the employee leaves their assigned work area.

G. Biweekly pay period is the two-week period for which an employee is scheduled to perform work.

H. AWS is both flexible and compressed work schedules.

I. Flexible Work Schedule (FWS) means a work schedule established under 5 USC, 6122, that:

a. in the case of a full-time employee, has an 80-hour biweekly basic work requirement that allows an employee to determine his or her own schedule within the limits set by this Agreement; and

b. in the case of a part-time employee, has a biweekly basic work requirement of less than 80 hours that allows an employee to determine his or her own schedule within the limits set by this Agreement.

J. Credit hours are any hours within a FWS which are in excess of an employee's basic work requirement and which the employee, with prior supervisory approval, elects to work so as to vary the length of a workweek or a workday.

K. Flexible hours (or “flexible time bands”) means the times during the workday, workweek or pay period within the tour of duty during which an employee covered by a FWS may choose to vary his or her times of arrival to and departure from the work site consistent with the duties and requirements of the position. All schedule changes need prior supervisory approval.

L. Gliding Schedule means a type of FWS in which a full-time employee has a basic work requirement of eight hours in each day and 40 hours in each week, may select a starting and stopping time each day, and may change starting and stopping times daily within the established flexible time bands. The Center standard is up to ½ hour prior to the start of the employee’s regular scheduled start time.

M. Maxiflex Schedule means a type of FWS that contains core hours in fewer than ten (10) work days in the biweekly pay period. An employee may vary the number hours of worked on a given workday, or the number of hours each work week within the limits established by the Center, (i.e.) biweekly pay period of eight 9 hours days, one 8 hour day and a day off.

Section 2 – Meal Periods

A. A meal period is not required for work periods of less than seven (7) hours per day.

B. The meal period may not be the first or last 30 minutes of your scheduled shift.

Section 3 – Alternate Work Schedules (AWS)

The Parties recognize that the use of AWS can improve productivity, morale and provide greater service to the public. Therefore, AWS in this Agreement will be made generally available to all employees based on valid operational need. Exclusion from participation will normally be the exception rather than the rule and will be done only in accordance with law.

A. An employee may request a FWS by submitting a written request to their first line supervisor. All written requests will be subject to supervisory approval/disapproval in accordance with 5 USC, 6131 and can be made effective the next pay period.

B. Employees who work an AWS may be allowed to “flex out and in,” subject to supervisory approval.

C. Possible **Compressed Work Schedule (CWS)** options may be:

1. A 5/4/9 work schedule is one in which a full-time employee works eight 9 hour days and one 8 hour day for a total of eighty (80) hours in a biweekly pay period.
2. A 4/10 work schedule is one in which a full time employee works four 10 hour days, forty (40) hours a week for a total eighty (80) hours a biweekly pay period.

D. Master Schedule

The Parties agree an employee may elect to begin their normally scheduled shift, reflected in the master schedule and with first line supervisory approval, between the hours of 6:00 a.m. to 9:30 a.m.

E. Option-Varied Day Schedule

The Parties agree an employee may elect a master schedule, with first line supervisory approval, that contains a varied day schedule. The schedule will be five (5) days per week and equals 40 hours each week in a two (2) week pay period.

Section 4 – Denial, Suspension and Termination of Flexible Work Schedule (FWS)

Denials of FWSs:

A. If the Center determines a position(s) is not eligible for a FWS, the Center will provide the written notice to the Union as soon as practicable.

B. When a supervisor denies a request for a FWS, he or she will:

1. notify the employee in writing, the basis for the denial;
2. if appropriate, provide an alternate schedule to the employee; and
3. notify the Union of the denial.

C. The supervisor may deny an employee's request for a FWS if that particular schedule would have an adverse impact on the Center (including a local work unit). Adverse Center impact is defined as:

1. A reduction of the productivity of the Center;
2. A diminished level of services furnished to the public by the Center; or
3. An increase in the cost of Center operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule).

AWSs may be suspended as a result of an unusual workload or operational demands. The Center will normally provide advance notice of at least one (1) pay period for non-emergencies. The Center will notify the Union as soon as practical. Efforts will be made to limit suspensions to as short a time frame as necessary to meet the workload or operational requirements, and restore AWSs as soon as possible.

Termination of AWSs:

A. If an AWS has already been established and the Center determines that the schedule is having an "adverse Center impact," the Center will notify the Union. The Parties will attempt to resolve the issue and promptly determine whether to continue the schedule.

B. If resolution cannot be reached the Parties will jointly present the issue to the Federal Services Impasse Panel (FSIP). The decision issued by FSIP is binding.

C. The basis for the decision will be based on demonstrating:

1. A reduction of the productivity of the Center;
2. A diminished level of services furnished to the public by the Center; or
3. An increase in the cost of Center operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule).

D. A schedule change will not occur until a decision has been issued by FSIP.

E. An employee's AWS may be suspended and/or discontinued due to performance and/or conduct issues in accordance with applicable directive and/or policy. The Parties agree there must be a nexus between the flexible schedule and the performance and/or conduct for an employee's flexible schedule to be discontinued.

Section 5- Credit Hours

A. Employees may earn credit hours in accordance with regulation, Departmental and Agency directive(s), provided there is work available.

B. The approval or denial of credit hours will be subject to the same criteria as annual or sick leave. Credit hours must be earned before they may be used.

C. Approval may be given before or after the credit hours are worked as determined by the supervisor.

D. There shall be no limit to the number of credit hours eligible employees may earn in a given day provided that there is work available to the employee and it can be performed at the requested time(s). However, earned credit hours should be worked and accounted for during the normal Center working hours.

Section 6 - Overtime

A. The supervisor or designee may, at the written request of an employee, grant compensatory time in lieu of overtime pay, whether such overtime hours are regularly scheduled or irregular or occasional in nature. If the employee does not request compensatory time in lieu of overtime pay, or if the employee's request for compensatory time in lieu of overtime pay is not granted, the employee shall be compensated for such overtime under the applicable statutory provisions.

B. In accordance with regulations, supervisors will not require employees to earn compensatory time in lieu of overtime pay.

C. The Center shall, to the extent practicable, permit employees to use their compensatory time at the earliest time convenient to them within 26 pay periods.

D. Normally, compensatory time off shall be granted before annual leave is approved. If annual leave would otherwise be forfeited, the annual leave shall be granted before compensatory time. Any employee who is unable to use compensatory time within 26 pay periods shall receive overtime pay instead.

ARTICLE 13

TELEWORK

Purpose

Effective use of telework enables the USDA to realize tangible savings in terms of reduced real estate and physical space demands, utilities and transit subsidy costs and enhanced employee recruitment and retention.

The Parties agree to work in accordance with the Departmental Regulation, Telework Program, DR-4080-811-002, dated January 30, 2014, and its successors.

Section 1 - Definitions

A. Definitions:

1. Telework: A work arrangement that allows an employee to perform work, during any part of regular paid hours, at an approved alternative work site, (i.e. home or other location).
2. Core telework: Telework that occurs on a routine, regular and reoccurring basis away from an employee's duty station.
3. Situational telework: Telework that occurs on an as needed basis that is not regular and reoccurring. This type of telework may be used for completing special projects, meeting extraordinary deadlines, continuation of business during emergencies and/or inclement weather.
4. Unscheduled telework: A type of situational telework that is typically used to allow employees on approved telework agreements to work from alternative work sites during periods of inclement weather, emergency situations, or for encouraging productivity needs during other short-term agency needs.

Section 2 - Criteria

A. Eligibility of Employees: Employee participation is voluntary and subject to management approval. An employee is considered suitable for telework if the following four (4) conditions are met:

1. Employee has an existing performance rating of "Fully Successful" or higher;
2. Employee has no misconduct, disciplinary (letter of reprimand through 14-day suspension or less) or adverse action or leave restriction occurring within the preceding 12 months;

3. Employee has never been disciplined for viewing, downloading, or exchanging pornography, including child pornography, from a government computer or while performing official Federal Government duties; and

4. Employee has never been officially disciplined for being absent without permission (AWOL) for five (5) days or more in any calendar year.

B. Written Agreements: Employees are required to obtain the approval of management, in the form of an approved Telework Proposal/Agreement, before engaging in telework.

C. Performance: The supervisor establishes work output requirements, as appropriate, and may require regular status reports. If work output and/or quality requirements are not being met, the employee's telework agreement may be modified or changed by the supervisor. A performance rating of less than "Fully Successful" will be grounds for canceling the employee's Telecommuting Work Proposal/Agreement.

D. Programmatic Changes: If participation in the telework program interferes with organizational and/or programmatic needs, the telework agreement may be cancelled with proper notification.

E. An employee may request telework Monday-Thursday for one (1) day per week.

F. An employee may request up to two (2) days of situational telework based on operational/programmatic needs.

G. If an employee requests leave on their telework day, it must be in accordance with Article 14, Leave.

H. If an employee's application for telework is denied, the employee will be provided specific reason(s) for the denial. The written denial should be provided in a timely manner. The employee is able to grieve the denial through the negotiated grievance process.

ARTICLE 14

LEAVE

General

- A. Employees will accrue and use sick and annual leave in accordance with applicable statutes, OPM regulations. When not specified otherwise, Agency Directives and Policies will be followed.
- B. All leave charges shall be in increments of 1/4 hour.
- C. Employees should make requests for leave as far in advance as practical to their immediate supervisor or their designee and will only be denied for valid operational needs.
- D. The Center may exercise flexibility of work scheduling or numbers of required employees on duty to accommodate an employee's need for emergency or unscheduled leave.
- E. Leave will be administered by the supervisor in a fair and equitable manner.

Section 1- Leave Earnings

- A. Full-time and part-time employees earn leave during each full bi-weekly pay period while in a pay status or in a combination of a pay status and a non-pay status in accordance with 5 CFR, Part 630, Absence and Leave.
- B. A full time employee in a Leave Without Pay (LWOP) status that reaches an increment of 80 hours of unpaid leave will not accrue leave within that pay period. The running total of 80 hours will reset each year on pay period one (1).

Section 2 – Annual Leave

- A. Annual Leave is provided to allow employees extended leave for rest and recreation and to provide periods of time off for personal and emergency purposes.
- B. The use of accrued annual leave is a right of the employee, subject to the right of the employer to approve when leave may be taken.
- C. The employee will submit a leave request in the current timekeeping system.
- D. Normally, the supervisor or designee will reply to the request for leave in a timely fashion. The employee will be responsible to assure that leave is recorded in their time and attendance record.
- E. The supervisor will distribute and update the process for requesting leave (including but not limited to unplanned leave) to all employees on an annual basis.

F. Management may cancel approved leave for compelling employer need. Should management cancel leave, the employee will be advised of the cancellation in writing (with rationale) as far in advance as practical.

G. Restored leave will be addressed in accordance with applicable policies and regulations.

H. Employees are advised that the proper leave approving official is their immediate supervisor or their designee.

Section 3 – Unanticipated Annual Leave

A. If the need for leave cannot be anticipated, the employee shall, as soon as practicable, contact the immediate supervisor or their designee to request approval of unscheduled leave. The employee will follow established work unit notification procedures in the event the immediate supervisor or their designee is not available.

B. If an emergency arises during the employee's duty day, the employee will request leave and obtain approval from his/her immediate supervisor, or their designee, before leaving the work site.

C. Employees who fail to follow leave requesting procedures as required above, may be charged Absent Without Leave (AWOL).

Section 4 – Annual Leave for Union Representatives

An employee who is a Union representative will be granted annual leave or Leave With Out Pay (LWOP) to attend internal Union functions, during the employee's regular tour of duty, which are not covered by Article 7, Official Time and Duty Time. Normally, an advanced notice of ten (10) work days will be required and will be approved subject to workload considerations.

Section 5 – Sick Leave

A. Employees are entitled to use sick leave, in accordance with 5 CFR, 630.401, when they:

1. Receive medical, dental, or optical examination or treatment; or
2. Are incapacitated for the performance of duties by sickness, injury, pregnancy, or confinement; or
3. Are required to give care and attendance to an immediate family member who is incapacitated due to a medical or mental health condition.
4. Make arrangements necessitated by the death of a family member or attends the funeral of a family member.
5. Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease.

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

Note: Sick leave is also authorized under the provisions of the Federal Employee Family Friendly Leave Act (H.R. 4361).
(See Section 10 of this Article)

B. It is the responsibility of an employee who is incapacitated and/or unable to perform their assigned work duties, to notify the immediate supervisor or their designee (or to have any responsible person make the notification for the employee) as soon as possible.

C. Employees will notify their immediate supervisor or their designee no less than one (1) hour prior to the start of their scheduled tour of duty if they are incapacitated to perform work.

D. An employee who expects to be absent more than one (1) day will inform the supervisor or their designee of the expected date of return to duty and notify the supervisor of any change. In the case of extended illness, of more than three (3) consecutive work days, daily reports will not be required.

E. Employees may request temporary modification of their work station or duties for periods as defined in the medical documentation that has been provided. The medical documentation will identify specific restrictions that preclude them from performing full regular duty assignments. Supervisors may provide appropriate limited duty assignments if they are available.

Section 6 - Documentation for Sick Leave

A. Employees may be required to furnish administratively acceptable evidence to substantiate a request for approval of sick leave if the sick leave exceeds three (3) consecutive workdays. Exceptions may be made on a case by case basis.

B. An employee requesting annual leave, sick leave, or leave without pay for periods of illness of more than three (3) consecutive workdays must make an appropriate request and may be required to furnish evidence of the need for sick leave upon return to duty. The Agency may place the employee on AWOL pending receipt of the medical certification.

C. An employee may justify the request for sick leave:

1. By medical documentation from the employee's personal physician or health care professional, or
2. For employees who have approved FMLA: An employee with a chronic medical condition that does not require medical treatment but does result in periodic absences from work will not be required to furnish a physician's certificate on a continuing basis if the employee: (1) is absent three (3) days or less, (2) is not on leave restriction and (3) provides, if requested, an updated valid medical certificate not more frequently than every 30 days but at least annually which clearly states the continuing need for the periodic absences.
3. Medical documentation must include a statement that the employee was incapacitated for work and date(s) of incapacitation. This will be considered sufficient for medical documentation purposes. This applies to both sick leave of more than three (3) days and documentation for sick leave restriction(s).

D. Documents regarding employee absence for sick leave purposes are highly sensitive. Management will ensure that they are maintained in a secure and confidential manner.

Section 7 – Sick Leave Restriction

A. Where there is reason to believe that an employee is abusing the sick leave entitlement;

1. The employee shall be formally counseled (provided with written documentation) and advised of the possibility of future medical certification requirements or other actions should the abuse continue. This does not preclude the supervisor from discussing perceived abuse of sick leave.
2. If the abuse continues, the employee may be required to furnish a medical certification for each sick leave application.

Section 8 – Advanced Sick Leave

A. Employees who are incapacitated for the performance of duties because of serious health condition, disability, or ailment may request advance sick leave not to exceed 240 hours. Two hundred forty hours (240) of sick leave is the maximum number of hours that may be advanced to an employee with a medical emergency related to the adoption of a child, for family care or to care for a family member with a serious health condition(s). Sick leave will not be advanced just because an employee has exhausted his/her sick leave. The advancing of sick leave is at the discretion of the supervisor.

B. In accordance with policy, (P&P 402.1, Flexible Work Schedules, and its successor), credit hours may be used to liquidate advanced annual or advanced sick leave.

C. Requests for advanced sick leave will be considered in accordance with governing regulations and for periods of absence that will be for more than three (3) consecutive days when all of the following conditions are met:

1. The employee is eligible to earn sick leave;
2. The employee's request does not exceed 240 hours, or for temporary employees only the amount to be earned during the period of temporary employment if appropriate;
3. There is no reason to believe the employee will not return to work after having used the leave;
4. The employee has provided acceptable medical documentation of the need for advanced sick leave.

Section 9 – Advance Annual Leave

A. An employee with an appointment of greater than 90 days or longer, and who is not intermittent may be advanced annual leave in accordance with their employment appointment and leave will accrue up to the end of the leave year. However, advance annual leave may not be granted to a temporary employee beyond the date set for the expiration of the employee's temporary appointment or to any employee if there is a likelihood that the employee will retire, be separated, or resign from the Agency before the date the employee will have earned the leave. Upon separation, employees must repay the balance of any remaining advanced annual and sick leave, unless resigning due to exceptions, as listed in regulation or:

1. Death;
2. Disability retirement;
3. Entrance into military service with reemployment rights; or
4. Resignation or separation because of disability which, according to medical certification, prevents the employee from return to or continuing employment.

B. Advance sick leave may be combined with annual leave when necessary to cover one continuous period of absence.

C. It is agreed that advance leave, including both sick and annual, will be fairly and equitably administered on a case by case basis.

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

E. The employee will be required to pay back the advanced leave in accordance with current and subsequent regulation, Departmental and Agency policies.

Section 10 – Leave for Family Purposes

A. Family and Medical Leave Act (FMLA)

The Agency will adhere to the Government-wide regulations for FMLA.

1. Maternity and Paternity Leave

- a. Under the Family Medical Leave Act, BUEs are entitled to 12 weeks of LWOP during any 12 month period for the following reasons:
 - i. Birth of a son or daughter and the care of such son or daughter, and
 - ii. Placement of a son or daughter for adoption or foster care.

2. Other Family Leave

Under the Family Medical Leave Act, BUEs are entitled to 12 weeks of LWOP during any 12 month period for one or more of the following reasons:

- a. The care of a family member of the employee with a serious health condition. Family member is defined as:
 - i. Spouse, and
 - ii. Sons and daughters,
 - iii. Parents of the employee
- b. A serious health condition of the employee that makes the employee unable to perform the functions of the position of such employee.
- c. Any qualifying exigency arising out of the fact the employee's spouse, son, daughter, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

Note: The employee may elect to substitute annual leave, sick leave for unpaid family or medical leave for any part of the applicable period consistent with governing laws and regulations. Employees may also combine annual leave, sick leave with unpaid family or medical leave for any period of approved leave. An employee may not retroactively substitute paid time off for unpaid family and medical leave.

B. Family Friendly Leave (FFL) (Federal Employees Family Friendly Leave Act (H.R.4361))

Under the Federal Employees Family Friendly Leave Act, BUEs are entitled to use sick leave to provide care for:

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

C. Notice of Leave

1. The employee will make an appropriate request for use of FMLA and/or FFL in accordance with Government-wide regulation.
2. When the need for unpaid FMLA is foreseeable and the employee fails to give 30 day notice with no reasonable excuse for the delay of notification, the Agency may delay the taking of family and medical unpaid leave until at least 30 days after the date the employee provides notice of his/her need for family and medical leave.

D. Medical Certification

An employee shall provide written medical certification to the Agency in a timely manner.

The written medical certification shall include:

1. The date the serious health condition commenced.
2. The probable duration of the serious health condition.
3. The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition including a statement as to the incapacitation, examination, or treatment, and likely duration of condition, may be required.
4. A statement that the employee is unable to perform the functions of his/her position.

The Agency shall not require any personal or confidential information in the written medical certification other than what is required by regulation.

If an Agency doubts the validity of medical records it can require a second and third (and final) opinion at the Agency's expense (5 USC, 6383).

E. "Health Care Provider" is defined as any of the following individuals:

1. Doctor of Medicine or Osteopathy.
2. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct sublimation as demonstrated by x-ray to exist) who are authorized to practice by state law.
3. Nurse practitioners and nurse midwives who are authorized to practice by state law or Christian Science practitioners listed with the First Church of Christ Scientist, in Boston, Massachusetts.

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

F. Medical Recertification.

The employee may be required to provide an updated certification during the leave period under FMLA,

1. If the medical condition(s) has changed or
2. The leave is not consistent with the information provided on the medical documentation.

An agency may require subsequent medical recertification in accordance with law, statute or government-wide regulation.

Section 11 – Protection of Employment and Benefits

A. Upon return from FMLA, the employee will be restored to the same position as occupied before the leave or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

B. When an employee requests leave under the Agency's Family Medical Leave program, the Agency will provide guidance concerning the employee's rights and obligations under the program.

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

D. An employee enrolled in a health benefits plan, who is placed in a leave without pay status may continue his or her health benefits enrollment while in the LWOP status, but is responsible to arrange through the appropriate channels to pay the contributions into the Employees Health Benefits Fund. The employer will continue to pay their portion of health and life insurance, if applicable, according to legal and regulatory requirements.

Section 12 – Employee Absences for Court or Court-Related Services

A. Except as otherwise modified by applicable law, Government-wide regulations or other outside authority binding on the Agency, an employee summoned or subpoenaed in connection with a judicial proceeding by a court or other authority responsible for the conduct of that proceeding shall be authorized to attend the judicial proceeding without charge to leave or loss of employee salary in the following instances:

1. For jury duty;
2. To appear as a witness on behalf of the Federal, District of Columbia, state, or local government; or
3. To appear as a witness on behalf of a private party in an official and job-related capacity or to produce official records.
4. “Expense money” may be retained by the employee. However, “fees for services rendered” must be submitted to the appropriate financial office.
5. It is agreed that days off and/or schedules will not be changed to avoid granting absence for court or court-related services.

B. An employee who is granted court leave and is excused or released by the court for any day or substantial portion of a day is expected to return to the employee’s regular duties except when:

1. Only a small portion of the work day would be involved and thus no appreciable amount of service would be rendered.
2. The distance from the court to the place of duty is such that this would be an unreasonable requirement.

Section 13 – Leave With Out Pay (LWOP)

A. LWOP may be requested and considered for approval in the same manner and for the same purposes as annual leave and sick leave.

B. Employees may request LWOP for educational purposes.

C. LWOP is granted at the discretion of management. Management does not have the discretion to deny leave in the following cases:

1. When a disabled veteran requests LWOP for medical treatment;
2. When requested by a reservist or National Guard member for military duties in accordance with appropriate military orders. Employees may request such leave after their military leave has been exhausted (38 USC, Section 4316(d));
3. When requested by an employee who has suffered an incapacitating job-related injury or illness and is waiting adjudication of a claim for employee compensation by the Office of Workers’ Compensation Program; or

4. When an employee makes a request under the Family and Medical Leave Act and meets the criteria for that program.

Section 14 – Religious Compensatory Time

- A. An employee whose personal religious beliefs require abstention from work during certain periods of time may elect to engage in credit or compensatory time work to compensate for time lost for meeting those religious requirements.
- B. To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the Agency’s mission, the Agency shall in each instance, afford the employee the opportunity to work compensatory time. The Agency shall in each instance grant compensatory time off to an employee requesting such time off for specific religious observances and when the employee’s personal religious beliefs require that the employee abstain from work.
- C. For the purpose stated in paragraph B of this section, the employee may work such compensatory time before or after the granting of compensatory time off. Advanced compensatory time off should be repaid with the appropriate amount of compensatory overtime work within a reasonable amount of time, not to exceed the end of the leave year. Compensatory time shall be credited on an hour-for-hour basis or authorized fractions thereof. Appropriate records will be kept of compensatory time earned and used.
- D. If the employee is separated or transferred before using the time set aside for a religious observance, any hours not used must be paid at the employee’s rate of basic pay in effect when the extra hours of work were performed. Any religious compensatory time used and not repaid will be charged to the employee at the same rate.

Section 15 - Military Leave

- A. In accordance with law and regulations, full-time permanent and part-time permanent employees who are members of the National Guard or the Armed Forces Reserves are entitled to 15 calendar days of regular military leave in a fiscal year for active duty or active duty for training.
- B. For part-time employees, military leave is prorated based on the number of hours in the employee’s work week.
- C. Employees who do not use the entire 15 days can carry any unused military leave (not to exceed 15 days) over to the next fiscal year. Military leave may never exceed 30 days in any one calendar year.
- D. Regular military leave is charged in increments of one (1) hour. Non-workdays falling at the beginning or end of military leave are not included in the period of military leave.
- E. Management will take into consideration the schedules of employees who work off-tours and will, when possible, arrange schedules to allow such employees to have scheduled days off immediately preceding and following the required military leave.

Section 16 – Voluntary Leave Transfer Program

A. The Agency will continue to use the Leave Transfer Program as designated in the current Agency Directives and Policies and as authorized by 5 CFR, 630 Subpart I.

B. Employees are entitled to donate and receive leave for medical emergencies. By reference, the definitions, eligibility criteria and administrative provisions pertaining to a Voluntary Leave Transfer Program contained in 5 CFR, 630 Subpart I are incorporated into this Agreement.

Section 17 – Leave for Bereavement

A. Upon request, subject to any documentation requirements, leave-approving officials shall approve sick leave, for employees to mourn the death of the following family members:

1. Spouse and parent’s thereof;
2. Children, including adopted children, and spouses thereof;
3. Parents;
4. Brothers, sisters, and spouses thereof; and
5. Any individual related by blood or affinity (including domestic partners) whose close association with the employee is the equivalent of a family relationship.

B. Additional leave (annual, and/or LWOP) can be requested as family care and bereavement needs not covered by sick leave.

C. The supervisor has discretion to require documentation (i.e., obituary, death certificate) prior to final approval of bereavement leave.

Section 18 – Administrative Leave

A. Administrative leave is absence from assigned duties without charge to leave or loss of pay. The Parties agree that excused absences may be granted for activities which are in the Government’s interest. The employee will be required to have supervisory approval prior to leaving or being absent from the work place.

B. Employees will be granted up to four (4) hours of administrative leave to donate blood. Time spent donating blood and in necessary travel for such purposes shall also be administrative leave.

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

1. Up to seven (7) days of paid leave each calendar year, in addition to annual and sick leave, to serve as a living bone marrow donor,
2. Up to 30 days of paid leave each year, in addition to annual and sick leave, to serve as an organ donor.

D. The Parties agree that the above reasons for granting administrative leave are not all inclusive and that there may be other situations supporting a request for the granting of such leave. Such requests shall be considered based on the reasons presented at the time. The employer may require documentation as appropriate to support the reasons for and/or the duration of such administrative leave requests.

ARTICLE 15
HAZARDOUS WEATHER

Purpose

The goal of the Center is to ensure the safe operation of the campus during inclement weather.

Section 1- General

The Parties agree to use the existing Center practice on the Hazardous Weather Condition and Closure Notifications. Any changes proposed by the Center will be given to the Union prior to implementation for review and negotiation as appropriate.

Section 2 – Distribution of Center’s Hazardous Weather Plan

A copy of the Center's Hazardous Weather Plan will be maintained on the Center’s web site.

Section 3 – Employee Commute

If an employee feels that they are unable to make a safe commute to or from work due to inclement weather the employee is able to request leave (i.e., annual leave, accrued credit time, accrued travel comp time, LWOP, etc.).

Article 16

HEALTH AND WELLNESS

Section 1 - General

The Parties recognize the Center's health and wellness initiatives are committed to fostering a healthy workplace by offering support and services to assist employees to enhance their overall well-being at work. Worksite health and wellness programs assist employees in modifying their lifestyles and move toward an optimal state of wellness that can produce organizational and employee benefits, such as lower healthcare cost, increased productivity, improved recruitment and retention, reduced absenteeism and enhanced employee engagement.

Section 2 – Participation

The Center will facilitate and encourage developing and sustaining programs that address the current and future needs of their employees to produce the healthiest possible workforce. For example, some services that may be supported but not limited to:

1. Health Fairs/Medical Insurance Fairs (open season)
2. Health Education (i.e. nutrition and weight control, stress reduction and management)
3. Health Promotion and Maintenance Programs
4. Immunizations (i.e. influenza shots)

Section 3 - Employee Welfare and Recreation Association

Employee Welfare and Recreation Association (EWRA) is a sanctioned member based group equally represented by all departmental and research units which provides financial support by fundraising for ERRC recreational activities and events to promote ideal interaction for the benefit of employee's welfare.

Section 4 - Fitness/Wellness Center

A. The Center may maintain a functional fitness center for employees. Employees are permitted to use the fitness center during non-duty hours. All employees that have access to the fitness center will have a signed consent form on file located in the Safety Office.

B. The Center will maintain the current compliment and /or comparable fitness equipment. If for any reason the Center is no longer able to maintain the current compliment of fitness equipment, the Parties agree to meet and discuss proposed changes and explore alternatives.

C. The Parties agree to develop and implement a system to ensure the equipment is working and appropriately maintained.

Section 5 – Changes to Article

The Parties may engage in pre-decisional discussion(s) related to proposed changes associated with this article in order to seek mutually agreeable benefits for the Center and employees.

ARTICLE 17
EQUAL EMPLOYMENT OPPORTUNITY (EEO)

General

It is agreed between the Parties to cooperate in providing equal opportunity and prevent discrimination against any employee based on age, sex, race, religion, color, national origin or disability. Furthermore, the Center agrees to be compliant with associated rule, regulations, laws, policy and procedures.

Section 1- EEO Charter

The Center agrees to post the EEO Committee charter and meeting minutes on the intranet.

Section 2 - EEO Events

Employees will be encouraged to participate in EEO related special events and functions.

Section 3 - Training

The Center shall continue to conduct training and provide information on EEO, ADA, and sexual harassment/harassment policies.

ARTICLE 18

EMPLOYEE ASSISTANCE PROGRAM (EAP)

Section 1 – Purpose

The purpose of the Employee Assistance Program (EAP) is to assist in providing appropriate prevention, treatment and rehabilitation of employees with alcohol, drug abuse or other biopsychosocial problems that are adversely affecting the employee's job performance and/or conduct. Biopsychosocial problems may include physical, emotional, financial, marital, family, legal, or vocational issues. Employees who suspect they may have such a problem, even in the early stage, are encouraged to voluntarily seek counseling and information on a confidential basis by contacting the individual(s) designated to provide such services. Supervisors are also encouraged to note when employees appear to be experiencing difficulties for which EAP may provide assistance, and to refer the employee to EAP for assistance. Early intervention may be helpful in returning the employee to full productivity.

The existence and functions of counseling and referral programs will be publicized to employees.

Section 2 - Record of Participation

The Agency will assure that no employee will have job security or promotion opportunities jeopardized by a request for counseling or referral assistance. The Agency will ensure that the confidentiality of medical records of employees concerning treatment for problems related to alcohol, drugs, emotional concerns, or other personal issues will be preserved in accordance with current public laws and OPM regulations or successors.

Section 3 - Voluntary Participation

Participation in EAP is voluntary. No employee will be required to participate or be penalized for merely declining referral to counseling services or for participating in the services provided.

Section 4 - Confidentiality

A. The Parties recognize that all confidential information and records concerning employee counseling and treatment will be maintained in accordance with applicable laws, rules, and regulations.

B. Without an employee's specific written consent, the supervisor may not obtain information about the substance of the employee's involvement with a counseling program. Information obtained with the employee's authorization from such counseling programs may not serve as the basis for disciplinary or adverse actions.

Section 5 - Excused Absence

A. A supervisor and/or manager shall grant up to one (1) hour of excused absence for each counseling session, up to a maximum of six (6) sessions per rolling calendar year, during the assessment/referral phase of rehabilitation, (see Section 5, D).

B. Reasonable time to and from the scheduled appointment will be granted as an excused absence in accordance with individual circumstances. The employee will be required to notify their immediate supervisor as soon as practicable if the agreed upon circumstances were to change. If additional time is required, the employee will request leave as soon as practicable and the request will be approved in accordance with existing leave policies and this Agreement.

C. Supervisors will release employees for EAP visits as soon as practical and as soon as work requirements allow. The Parties will encourage employees to make appointments with the EAP professional.

D. The number of excused absences for EAP counseling services will be consistent with the current Departmental/Agency Regulation or successors.

Section 6 - Leave Associated with EAP

It is the policy of the Agency to grant leave (sick, annual, or LWOP) for the purpose of treatment or rehabilitation for employees under the Employee Assistance Program as would be granted for employees with any other health problem.

Section 7 – Program Sponsor

The parties agree the EAP is an Agency sponsored program and in no way obligates the Center to continue the program if the Agency elects to no longer provide the program. This does not eliminate the obligation to bargain if required.

ARTICLE 19

CHARITABLE, PROFESSIONAL and CIVIC ACTIVITIES

General

Employees are encouraged to join and participate in charitable, emergency rescue or protective work, professional and civic organizations as appropriate. The Parties recognize the voluntary nature of such causes and agree to the furtherance of this principle. Employees involved in these functions should be able to devote the necessary time to the collection, delivery and other administrative duties that are associated with these charities. The voluntary nature of membership in such organizations is recognized, and such membership should have no bearing on employee performance evaluations.

Section 1

The Parties recognize the Combined Federal Campaign as a sanctioned charity by the Agency.

Section 2

The Center agrees to invite the Red Cross to conduct a blood donation program at the Center. Employees will be permitted to donate blood to the Red Cross at the Center on duty time, see article 14, Leave. Normally, the employee will make an appointment in advance for a specific donation time slot and notify the supervisor of said appointment. The employee will notify their immediate supervisor prior to leaving the work area to participate in the blood donation program occurring at the Center.

ARTICLE 20

TRAINING

General

Management acknowledges the importance of training and employee development to the mission of the Center and to the morale and well-being of employees. Therefore, the Center agrees to consider the desires of employees and the benefit to the Agency in planning and scheduling employee training.

Section 1

The Union may at any time bring to the attention of the appropriate Management official such training needs as it deems necessary for the safe and efficient performance of the duties of employees. Management agrees to give serious consideration to recommendations of the Union. Management will provide responses to specific training requests/recommendations made by the supervisor, the Union, and/or employees.

Section 2

Management may consider training employees whose jobs are abolished or absorbed into other positions because of technological or procedural changes, and/or programs impacted by budgetary constraints.

Section 3

Employees' Individual Development Plans (IDP) should be carried out to the fullest extent practicable within the specified time frame.

Section 4

The Parties agree the Union will be able to meet with new employees during New Employee Orientation (NEO).

ARTICLE 21

SAFETY

General

The Parties agree to cooperate in the furtherance of safety objectives, and the enforcement of all appropriate safety regulations, rules, and published standards. The Center will attempt to maintain conditions of employment that are free of hazards or conditions that may cause accidents, injuries, or illnesses. Employees will be required to comply with safety standards, rules and regulations, and the use of safety equipment which is provided by the Center.

Section 1

To ensure the safety of all employees, during non-business hours, at least two (2) employees must be in close proximity of each other when working in the laboratories and pilot plants. It is not necessary that the minimum two (2) employees be the supervisor and employee. The supervisor and employee will work together to ensure a safe working environment.

Section 2

A. The Integrated Safety, Health and Environmental Management (I-SHEM) Committee is a point of contact for safety and/or health initiatives in the Center involving BUE's.

B. Employees may obtain a copy of the committee charter on the Safety web page on the intranet.

C. The Union designated member of the I-SHEM committee will be provided with all information which is necessary to carry out committee responsibilities. Such information includes but is not limited to accident, injury and illness data, reports of Center inspections relating to safety and health, statistical reports which may be required by the Department of Labor (DOL), appropriate portions of a supervisors' accident report and/or other information relevant to the safety and health of employees at the Center.

D. Union representative(s) of the I-SHEM committee will be serving on duty time.

Section 3

A. Employees will be advised by their supervisors in advance when they will be working with known or suspected carcinogens or teratogens.

B. Employees who work with hazardous, carcinogenic, or teratogenic material will be provided with yearly physical examinations including but not limited to appropriate blood tests. These exams will be at the expense of the Center and all results will be made available to the employee.

Section 4

In accordance with government wide regulations employees will be allowed to participate in the Occupational Surveillance Program.

Section 5 - Investigation of Accident, Injuries, and Near Misses

Management agrees to investigate the facts and circumstances related to accidents, injuries, and near misses in accordance with Departmental/Agency policy and procedures, with the goal of promoting a safer work environment.

Section 6 - Work-Related Injuries and/or Illnesses

A. Employees have the right and are encouraged to report injuries and/or illnesses that are work-related to a supervisor or manager.

B. An employee will be notified promptly concerning possible options such as a claim under the Federal Employee Compensation Act (i.e., Workers' Compensation). The employee may request assistance regarding a claim for compensation for such work related illness or injury and the Center will provide such assistance.

C. Appropriate Center personnel are promptly notified to ensure timely processing of necessary reports and employee claims.

Section 7 - Imminent Danger

A. In accordance with 29 CFR, 1960, the term “imminent danger” means any conditions or practices in any workplace which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through normal procedures.

B. An employee may decline his or her assigned task because of reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is an insufficient time to seek effective redress through normal hazard reporting and abatement procedures.

C. Employees will report imminently dangerous situations by the most expeditious means available to any supervisor or manager or safety officer who is immediately available.

D. The Union will be notified immediately by the Agency and/or Center of all reports of imminent danger situations so that it may provide representation and assistance to employees making reports and given an opportunity to be present during any inspection. Employees and the Union will be told when the imminent danger situation will be inspected. Inspections of imminent danger situations will occur within the timeframe established by applicable regulations, 29 CFR, 1960.28 (d) (3).

E. All Agency and/or Center determinations and actions on imminent danger reports will be put in writing to the reporting employee and the Union explaining the basis for the findings and actions within the timeframe established by applicable regulations (currently with 15 days from the date the report was made to the Agency and/or Center if no inspection is to be done or within 15 days after the completion of an inspection under 29 CFR, 1960.29(d) (4)).

F. If the conditions cannot be immediately corrected, employees will be assigned to work in a safe area.

G. If the supervisor or manager believes the condition or corrected condition does pose an immediate danger, the supervisor or manager shall request an inspection by safety specialists. The Union President or designee shall also be contacted and afforded the opportunity to be present at the time the inspection is made.

H. When the Agency and/or Center has determined that the imminent danger has been resolved and employees may return to work, supervisors may verbally instruct employees to return to their work areas. This will be promptly followed by the supervisor or other management official sending an e-mail or other written document notifying the employee and Union that the situation is now deemed to be corrected and the area is safe.

Section 8 - Safe/Healthy Conditions

Maintaining safe and healthy work environments, as a shared responsibility of the Union and Center, is necessary for the accomplishment of the Center's mission and contributes to a high quality of life for employees.

Section 9 – Incident Response Team (IRT) Team

Management will continue to support the committees and safety teams such as IRT to enhance the safety of our employees.

Section 10 – Reporting and Processing of Safety Complaints

A. Any employee, group of employees, or Union representative of employees who believe that an unsafe or unhealthy working condition exists in any worksite, has the right to report such condition to any supervisor, manager, executive, OSHA, I-SHEM member and the Union. An inspection of potentially serious conditions will be made within the timeframe established by applicable regulations. Appropriate testing or sampling may be required as part of the inspection under 29 CFR, 1960.28 (d) (3)).

B. When the Center or other appropriate authority determines that a dangerous or potentially dangerous condition exists at a worksite, the Union President and employees at that worksite will be notified as soon as practicable so that precautionary steps can be taken.

C. At the conclusion of a review, investigation or analysis of a potential or imminent safety concern, the reporting employee will be advised that the issue is being addressed, and if/how/when it has been resolved. This information will also be shared with the Union President or designee within five (5) business days at the conclusion of the review.

D. If the Union is not satisfied with the Center's resolution to a report of hazardous working conditions, the Parties agree to meet and have an after action review of the situation.

Section 11 – Posting Notices

A. The Center shall post a notice of hazardous conditions discovered in worksites as required by applicable laws, rules, and regulations as soon as practicable. The notice shall be posted, at or near the location of the hazard and shall remain posted until the cited condition has been corrected.

B. Such notices shall contain a warning and description of the unsafe or unhealthy condition and any required precautions to the full extent required by applicable laws, rules, and regulations. Along with the posting, the Center shall provide notice to the Union President and/or designee.

Section 12 – Abatement of Safety Issues

A. The Agency and/or Center shall promptly abate any known unsafe and unhealthy working condition. Toward this end, any equipment, devices, structures, clothing, supplies, tools, or instruments that are found to be unsafe will be removed from service, locked-out, and/or tagged-out or rendered inoperative, as appropriate.

B. If there is an emergency situation in a worksite, the paramount concern is for the preservation of safety and health. Should it become necessary to evacuate an area, the Center shall take precautions to protect the safety and health of employees. Employees ordinarily will not be readmitted to an evacuated area until it is determined that there is no longer danger to the evacuated personnel.

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

D. The Union President and/or designee will be notified as soon as practicable and consulted regarding the development and implementation of abatement plans and all personnel subject to the hazard shall be advised of interim measures in effect and shall be kept informed of subsequent progress on the abatement plan.

E. If conditions cannot be immediately corrected, the Center will make efforts to utilize work at reassignments or other available measures.

F. If an employee has safety concerns about their work environment their concerns should be immediately reported to their supervisor. The supervisor will make an assessment as soon as practicable. The employee has the liberty to elevate their concerns to the next level supervisor and /or I-SHEM in the event the immediate supervisor has failed to respond to the employee's concern.

G. An employee may notify the Union of their safety concern(s). The Union may request additional information as well as information regarding resolution of the safety concern(s).

H. Employees may request a change of duty location during the work process if they reasonably believe that their health or well-being may be affected by the work operations being conducted.

Section 13 – Safety Equipment and Personal Protective Equipment (PPE)

A. The Agency and/or Center shall provide relief or assistance to employees required to lift heavy items, or to operate machinery or equipment requiring exertion beyond safe limits specified in applicable laws, rules, or regulations (20 CFR, 416.967 Physical Exertion Requirements).

B. Eye hazard areas, equipment, and occupations will be designated by the Agency. Industrial safety glasses, plain or prescription, will be issued at no cost if an individual is working in a designated eye hazardous area or operation.

C. Prescriptions will be provided by the employee from their own eye doctor. Prescriptions must be less than one (1) year old. The Center will provide the employee with the prescription safety glasses for use at work only.

D. Personal Protective Equipment (PPE), as required by appropriate Federal and/or State government (or its subdivisions) standards to protect employees from hazardous conditions encountered during the performance of their official duties, will be provided at no cost to employees.

E. At a minimum, the Center will provide employees information and any training required by OSHA standards on PPEs provided to employees.

Section 14 – Smoke Free Environment

The Parties agree that a smoke-free work environment is essential to the health of all employees. Management shall continue to provide smoking areas that are currently designated for this purpose. The Union will be notified of any changes to these designated areas.

Section 15 – Safety Training

A. The Center agrees to conduct training in the emergency alarm and evacuation system at the Center including evacuation drills at least every six (6) months.

B. Training in laboratory safety and the use of fire extinguishers will be made available to all employees on an annual basis. Attendance at these training sessions should be strongly advised by management for all employees at the Center.

C. All Center employees shall receive appropriate training in order to conduct their work in a safe manner. Such training shall also inform employees of the Safety, Health, Environmental Management Program.

Section 16 – Government Vehicles

All Center government vehicles will be supplied with a fully equipped First Aid Kit and a working flashlight.

Section 17 - Wellness Program

Employee wellness and the investment in programs to maintain employee health, contribute directly to sustained productivity and reduction of lost employee time due to illness. Therefore, the Center will facilitate and/or encourage programs in such areas as weight reduction, stress reduction and management, nutritional counseling, smoking cessation, prevention of injuries, health screenings, and exercise (see Health and Wellness, Article 16).

Section 18 - Temporary Accommodations

For an employee requesting return to duty from sickness or injury with temporary limitations placed on his performance, as substantiated by a doctor's certificate, the Center will make a diligent effort to assign the employee to available work within these limitations. If limited duty is not available, the employee will be placed on continuation of pay, if eligible, or in an appropriate leave status at the employee's option.

Section 19- Personal Security

The Parties recognize that personal/property security and protection are mutual responsibilities of the employer, the Union and employee; each have a role in maintaining a safe and secure working environment. The Agency's internal security practices will be focused on protecting employees' safety and the Federal Government's facilities and property.

- A. The Center shall provide all employees a secure location for storing personal property. Employees are advised that for compelling reasons the Center may access these locked storage areas. This may include but not limited to: mission requirements, security requirements, safety needs, and facility maintenance requirements.
- B. When a secured locker/drawer/space is accessed when an employee is not present, the employee will be advised that their locker/drawer/space was opened. Normally, when a secure locker/drawer/space is accessed there will be two (2) individuals present.
- C. The Center shall notify all employees of incidents such as but not limited to: bomb threats, severe weather, suspicious persons/packages, active shooter, etc., received at or about any facility housing employees as soon as practicable.
- D. Employees who report physically threatening situations will receive appropriate assistance from the Center.
- E. When the Center becomes aware that an employee in the work place has been subjected to threats, harassment, or other conduct leading to a reasonable fear on the part of the employee for their safety, the Center shall promptly discuss the matter with the employee and take appropriate action within the scope of applicable regulations and rules.
- F. The Center will be responsible for providing information related to safety policies and procedures for all employees. Training will be provided to employees when protocols are updated or new protocols are introduced.
- G. Employees will be provided with emergency numbers during new employee orientation and any emergency response related training.

Section 20 - Workplace Violence

Violence constitutes a health and safety hazard in the workplace. Exposure to violence can result in both physical and emotional harm to employees. Although it is the employer's obligation to provide a safe and secure working environment, the Center and Union agree to work together to prevent workplace violence and to minimize the occurrence and effects of violence in the workplace should it occur.

A. All employees who report harm resulting from an incident of workplace violence shall:

1. Have access to immediate first aid and transportation to the nearest medical facility, as appropriate;
2. Have access to emotional support, including but not limited to traumatic stress debriefing and counseling under the employee assistance program(s); and
3. Be referred to the appropriate Human Resources staff member or designee for information on filing a workers' compensation claim.

Section 21 - Emergency Preparedness Plans

A. Center employees shall have access to the emergency preparedness plan that establishes procedures for safeguarding lives in the event of incidents such as: fire, earthquake, bomb threat, tornado, flood or similar natural or man-made emergency.

B. Employees may request specific information on Emergency Plans from I-SHEM.

C. It is expected employees will participate in drills unless otherwise excused by their supervisor.

D. Center evacuation plans will be posted and available on the Center's intranet.

E. The Center shall ensure that there is an emergency notification system at the Center that allows immediate notification of employees of emergency situations.

Section 22- Hazardous Materials

A. Each laboratory will maintain a current list of all hazardous materials and Safety Data Sheets (SDS).

B. The Bio-Safety and Chemical Hygiene Manuals will be updated and located on the Center's intranet.

C. The Center will identify each laboratory by pathogenic exposure and hazardous materials stored according to designated biosafety level.

D. Annually employees will be given information on the safe handling and disposal of various hazardous chemicals and materials used at the Center.

E. Employees who work with and are exposed to hazardous, carcinogenic, or teratogenic material will be provided with physical examinations including but not limited to appropriate blood tests. These exams will be at the expense of the Center and all results will be made available to the employee. Employees will be granted duty time to participate in the exams.

Section 23 - Indoor Air Quality

A. Employees are entitled to work in an environment containing safe and healthy indoor air quality. The Center shall provide safe and healthy indoor air quality by conforming to laws, guidelines, regulations, and/or policies issued by Federal regulatory Agencies such as OSHA, EPA, and GSA.

B. On-site investigations/inspections will be conducted when a problem concerning indoor air quality or building related illness is formally brought to Management's attention. These investigations/inspections shall meet the criteria of established government wide rule or regulations including OSHA protocols. The Union will be notified of investigations/inspections that will take place.

Section 24 - Ergonomic Review of Work Area and Duties

A. Employees may request an ergonomic review of their work area and duties at any time.

B. Once the ergonomic review has been completed, supervisors will review the report with the employee to determine the necessary outcomes. Ergonomic adjustments to the work area and/or equipment may be acquired if deemed necessary.

C. All hoods at the Center will be certified in accordance with Federal and Agency regulations. Hoods found not to be in compliance with these standards will be marked "out of order".

Section 25 – Applications of Glue, Paints, Etc.

There will be limited application of carpet glue, HVAC cleaning agents, paints, or other like construction or maintenance chemicals during work hours, when possible, in enclosed spaces occupied by employees. The Center will notify employees as soon as practicable of work to be conducted during normal work hours.

ARTICLE 22

PERFORMANCE MANAGEMENT

It is the Agency's policy to operate a performance appraisal program in a manner which is consistent with applicable statutes, regulations, and this Agreement. A written performance plan will be provided to each employee covered by this Agreement at the beginning of each appraisal period (normally within 30 days).

In accordance with 5 USC, 4302(a) (1-3), a performance appraisal system is developed to "provide for periodic appraisals of job performance of employees; encourage employee participation in establishing performance standards; and use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees."

Section 1 – General

A. The official appraisal period for which a performance plan must be prepared and monitored, and for which a summary performance rating (rating of record) is issued, normally is October 1 through September 30 of each year.

B. The performance rating prepared at the end of an appraisal period is for performance of assigned duties over the entirety of the specified appraisal period.

C. The minimum performance appraisal period is 90 days. If an employee is not on a performance plan for 90 days, the employee cannot be rated.

D. A written performance plan will be provided to each employee within 15 days of the new performance period. The performance plan will contain all of the written performance elements, critical and non-critical elements if used, and their performance standards.

E. The performance plan must be communicated to the employee before the employee may be held accountable. The employee will sign and date the plan to acknowledge they have received their performance plan.

F. Standards established for an employee's position shall be in writing and communicated to the employee when the employee enters a position or when a new standard is established for the employee's position. Evaluation of performance of standards will be consistent with written procedures.

G. Progress reviews by the supervisor will be conducted during the appraisal period. The supervisor should conduct an interim progress review at the midpoint of the appraisal period to ensure that performance elements and standards are appropriate and to advise the employee of current performance. Supervisors and employees are encouraged to communicate frequently during the appraisal period and discuss any performance concerns that may arise as soon as possible.

H. Normally the immediate supervisor will be responsible for establishing the employee's performance plan; normally will provide the mid-year progress review; and prepare the final performance appraisal rating (rating of record).

I. Normally the employee's second-level supervisor will review and approve the performance plan and the final performance appraisal rating (rating of record).

Section 2 - Employee Responsibilities

All employees are responsible for:

1. Participating in discussions with their supervisor concerning the development of performance elements, standards and measures (optional) and participating in their progress reviews and performance appraisals;
2. Ensuring they familiarize themselves with their position description and performance plan, requesting clarification of expectations if necessary, and requesting information to be able to work towards a rating beyond a fully successful from the supervisor;
3. Taking responsibility to improve their own performance and support team endeavors;
4. Identifying business improvement opportunities and collaborate with peers and supervisors to accomplish them;
5. Seeking performance feedback from their supervisor;
6. Discuss and identify training opportunities with supervisors; and
7. Documenting their performance accomplishments, and being prepared to provide written specific examples of their accomplishments including feedback from internal and external customers, during the performance appraisal discussion.

Section 3 – Center Responsibilities

Management is responsible for:

1. Providing adequate training in performance management to new supervisors prior to conducting evaluations;
2. Communicating performance expectations clearly, monitoring performance during the appraisal period and providing performance feedback to employees, provide development opportunities as applicable for the employee's current scope of position, and taking appropriate actions to address performance not meeting expectations;
3. Supervisors will provide regular and reoccurring feedback on the quality of performance during the appraisal period, and preparing ratings. Supervisors will inform employees if their performance drops below the fully successful level;

4. Engaging the employee in the process of establishing and documenting the employee's performance plan;
5. Preparing performance ratings in a timely manner and ensuring equity and consistency in performance ratings; and
6. For providing training when applicable (i.e. technical and/or safety training on equipment, new technologies and changes in procedures).

Section 4 - Rating Performance

Normally, a written final performance appraisal rating (record of rating) will be issued to each employee by October 30. If a performance cycle has been extended, the supervisor should rate employees within 15 days from the end of the extended cycle.

Section 5 - Unacceptable Performance

A. If at any time during the performance appraisal period an employee's performance is determined to be unacceptable in one (1) or more critical elements, the supervisor must:

1. Notify the employee of the performance element(s) for which performance is unacceptable; and
2. Inform the employee of the performance requirement(s) or standard(s) that must be attained to demonstrate acceptable performance. The supervisor must inform the employee that unless his/her performance in the critical element(s) improves to and is sustained at an acceptable level, the employee may be reassigned, reduced in grade or removed.
3. The employee may elect to have Union representation present for these meetings. The Union representative has the right to be present at the performance related meetings upon the request of the employee.

B. Performance Improvement Plans (PIP): The goal of a PIP is a mutual desire to return the employee to fully successful performance as soon as possible. For each critical performance element in which the employee's performance is unacceptable, the supervisor must afford the employee a reasonable opportunity to demonstrate acceptable performance commensurate with the duties and responsibilities of the employee's position and place the employee on a performance improvement plan. The performance improvement plan must include:

1. A minimum opportunity period of 90 days to demonstrate acceptable performance; it is understood that the time frame may be extended if additional time is needed;
2. Identify and describe the performance deficiencies in the performance elements and standards for which the employee's performance is at the unacceptable level;

3. Provide clear goals which are appropriate for the responsibilities of the employee's position;
4. Frequent (at a minimum, every two (2) weeks) interaction and feedback with supervisor regarding progress; and
5. Required progress reports will be documented in writing and a copy provided to the employee.

C. If the employee demonstrates an acceptable level of performance during his/her opportunity period, then he/or she is required to maintain an acceptable level of performance for one (1) year from the beginning of the opportunity period.

D. In accordance with 5 CFR, 432.105 (a)(2), if the employee does not demonstrate an acceptable level of performance for a critical element during the opportunity period or for one (1) year from the beginning of the opportunity period, the supervisor may initiate a reassignment, reduction in grade, or removal action.

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

1. A 30 day advance written notice of the proposed action, which identifies the specific basis for the proposed action.
2. The employee must inform the deciding official, in writing, of the representative's name.
3. A reasonable time, not to exceed 15 calendar days, to answer orally and in writing, and to provide witnesses, work product(s), and/or other evidence to challenge the proposed action.

F. A decision to retain, reduce in grade, or remove an employee shall be made no later than 30 calendar days after the date of expiration of the notice period. The employee will be given this decision in writing. Unless the action is proposed by the Head of the Agency, the deciding official will be at a higher management level than the proposing official.

The decision will:

1. Specify the critical element(s) for which the employee did not achieve "fully successful" performance, and on what the decision is based;
2. Specify the action to be taken, the effective date, and the employee's right to appeal the decision.

G. The employee may appeal to either the Merit Systems Protection Board (MSPB) in accordance with applicable law, or through grievance process outlined in the negotiated agreement. An employee shall be deemed to have exercised the appeal option at such time as the employee initiates a timely appeal under the statutory procedure or the negotiated agreement. If arbitration is invoked, procedures will follow the process outlined in the negotiated agreement, see Article 26, Grievance Procedures and Article 27, Arbitration.

Section 6 - Temporary Duty Assignments (Details) (TDY) and Temporary Promotions

A. Performance plans must be provided for details and temporary promotions of 90 days or more. Performance plans will be provided in writing to the employee normally within 15 days of the start of the detail or temporary promotion.

B. The supervisor responsible for the detail or temporary promotion should document the employee's accomplishments at the end of the TDY assignment or detail and forward it to the employee's supervisor for appropriate consideration. The employee's supervisor will give the accomplishments the appropriate consideration, (i.e., performance of elements and standards associated with the employee's normal duties versus duties not normally performed).

Section 7 - Individual Developmental Plan (IDP)

As a part of the performance planning process, each employee is encouraged to discuss short- and long-term learning and developmental goals with the supervisor and develop an IDP. The plan may include elective training, education and developmental activities in which employees may engage to improve their knowledge, skills and abilities, and ultimately job performance.

ARTICLE 23

MERIT PROMOTION

Section 1 - Purpose

The parties agree that merit promotion principles are applied in a consistent manner, with equity to all employees, and without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex, national origin, disabling condition, age, or sexual orientation, and shall be based solely on job-related criteria and applicable law, rule and regulation.

Section 2 - Actions Covered By Competitive Procedures

In accordance with 5 CFR, 335.103, competitive procedures will apply to the following types of personnel actions subject to the exceptions explained in Section 3:

1. Promotions,
2. Temporary promotions for more than 120 calendar days,
3. Details over 120 calendar days to higher graded positions or to positions with known promotion potential,
4. Selection for training which is part of an authorized training agreement is, part of a promotion program, or required before an employee may be considered for a promotion as specified in 5 CFR, 410.302.
5. Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in competitive service. Exceptions are actions permitted by reduction-in-force regulations,
6. Transfer to a higher-grade position or with more promotion potential than a position previously held on a permanent basis in the competitive service,
7. Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a previously held on a permanent position basis in competitive service.

Section 3 - Actions not Covered by Competitive Procedures

In accordance with 5 CFR, 335.104, competitive procedures will not apply to the following personnel actions which are exceptions to Section 2 above:

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

- a. Competitive procedures;
- b. Competitive appointment from a certificate of eligibles (through OPM or delegated examining authority);
- c. Non-competitive appointment under special authority; such as conversion of Pathways Program or similar program(s), appointment of former ACTION Volunteers or Peace Corps volunteers, conversion of a Veterans Recruitment Authority (VRA) appointee and Presidential Management Fellows.

2. Promotion Based on Reclassification when:

- a. No significant change occurs in the duties or responsibilities of the position and the position is upgraded due to issuance of a new classification standard, or the correction of a classification error; or
- b. The position is upgraded due to accretion of additional duties and responsibilities and the following provisions are met:
 - i. The duties of the former position are absorbed into the new position
 - ii. The new position has no promotion potential;
 - iii. The additional duties and responsibilities assigned or accrued by the incumbent do not adversely affect or impact other positions in the organizational unit;
 - iv. The new position is not a reclassification from nonsupervisory to supervisory status; and
 - v. The accretion is supported by a written analysis of the position which may involve a position review including written, face-to-face, and/or telephonic reviews with the employee and/or the employee's supervisor, or other fact gathering method.

3. Permanent Promotion to a position held under a temporary promotion when:
 - a. The assignment was originally made under competitive procedures;
 - b. It was known to all competitors at the time of original appointment that the assignment may lead to a permanent position.
4. Temporary Promotion:
 - a. Of an employee for less than 120 calendar days;
 - b. Promotion for more than 120 calendar days to a grade level previously held on a permanent basis, unless the employee was demoted for reason related to performance or misconduct.
5. Placement as a Result of Priority Consideration: when the referral is a remedy for candidates not given proper consideration in a competitive promotion action.
6. Reduction in Force Placements: which result in an employee receiving a position with higher promotion potential will not occur unless an employee currently holds or previously held the higher grade on a permanent basis in the competitive service.
7. Promotion to a Grade Previously Held: on a permanent basis in the competitive service, from which the employee was separated or demoted for other than performance or conduct reasons and not at the employee's request.
8. 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 (or in another merit system with which OPM has an interchange agreement approved under 5 CFR, 6.7) and did not lose because of performance or conduct reasons.
9. Promotion as a Legal Remedy: as ordered and agreed upon in a legal or administrative proceeding.
10. Details: for one hundred twenty (120) calendar days or less to a higher graded position or to a position with known promotion potential.

Section 4 - Temporary Promotions

A. Bargaining unit employees will not be detailed and/or temporarily promoted to higher graded positions or positions with known promotion potential for more than a cumulative total of 120 calendar days during any 12 month period without the use of competitive procedures.

B. Temporary promotions for qualified and eligible bargaining unit employees will take effect the date requested on the SF 52, or as soon as possible thereafter. Employees must be doing the full scope and performance of the position and be eligible to meet OPM qualifications for temporary promotions. Short term “acting” positions are not considered for temporary promotions.

C. Details to higher grades will not be interrupted for the purpose of avoiding temporary promotions.

D. Temporary promotions for more than 120 calendar days will be advertised and competed in accordance with OPM regulations.

Section 5 - Priority Consideration

A. An employee who would have been referred but was not given proper consideration due to a procedural violation or error in a previous competitive placement action, must be given priority consideration for the next vacancy that the Agency elects to fill, in the same series, grade(s), promotion potential, and location as the one for which consideration was lost. This means that the employee must be referred to the selecting official for consideration before using the competitive procedures. If selected on the basis of priority consideration, the employee is promoted or reassigned noncompetitively. If the employee refuses priority consideration, the employee forfeits his/her entitlement to the priority consideration.

B. The selecting official will exercise priority consideration for specific and identified eligible employee(s) prior to selection from a competitive certificate as directed. If applicable, an employee will have received written notification by the authorized Agency official indicating their eligibility of priority consideration. If the eligible employee is not selected, the employee will be given (in writing or by e-mail) the reason for non-selection. Copies of the notice will also be provided to the Union and Human Resources Office.

Section 6 - Involuntarily Demoted Employees

A. Employees who are involuntarily demoted in the Agency without personal cause due to the following events are entitled to consideration for re-promotion before using competitive procedures:

1. An error in the prior classification of a position;
2. A change in classification standards without a change in duties and responsibilities;
3. A change in duties and responsibilities caused by a gradual erosion or by management action; or
4. The application of reduction in force procedures.

B. Grade retention entitlement lasts for a period of two (2) years and applies to positions at the employee's former grade or at any intervening grades that are to be filled under competitive procedures. The right to this consideration does not apply to a position with promotion potential higher than that of the position held at the time of the change to the lower grade.

Section 7 - Scope of Competition

A. Area of consideration for the vacancy will be determined by the Agency and will be broad enough to reach a high quality applicant pool while meeting its obligations under the Agency's Outreach and Diversity objectives.

B. The Agency may consider the use of an area of consideration limited to the local commuting area prior to opening a separate case examining announcement open to all U.S. citizens.

Section 8 - Vacancy Announcements

A. Publication of vacancies will be made through the Government-wide electronic recruitment site, currently www.usajobs.gov (or its successor). In addition, the local Human Resources staff will continue to provide notification of vacancies to employees through the e-mail system.

B. Notification of amendments, cancellations, or other changes to the vacancy announcement will be accomplished through the government electronic recruitment site.

C. Announcements for Bargaining Unit vacancies will be posted for a minimum of 14 calendar days prior to closing date. By mutual agreement the posting period can be adjusted.

D. Open and continuous announcements may be used. Employees can apply to an open continuous announcements as outlined in the vacancy announcement.

E. Vacancy announcements will include:

1. Statement of nondiscrimination;
2. Announcement number and posting and closing dates;
3. Position(s) and/or title(s), series and grade(s);
4. Anticipated number of (i.e. multiple) vacancies to be filled;
5. Area of consideration;
6. Type of test(s) to be used, if any;
7. Description of promotion potential, if any;
8. When using an automated recruitment system, each factor/question used to determine the basic eligibility and/or best-qualified candidates will be included on each announcement;
9. Geographic and organizational location;
10. If relocation expenses will or will not be authorized;

11. Summary of the duties of the position;
12. Summary of eligibility and qualification requirements;
13. Permanent or temporary nature, and, if temporary, the duration and if the promotion may be made permanent;
14. Contact information of the Human Resources staff member relating to the announcement;
15. Special working conditions, such as tour of duty, travel requirements, expected overtime, physical requirements, background investigations, etc.;
16. The different levels at which the position may be filled if it is a multiple-level announcement; and
17. Additional specific information relevant to the evaluation of the candidates, such as writing samples and portfolios.

Section 10 - Application Process

A. Employees will follow the requirements for filing an application as outlined in the vacancy announcement.

B. The Parties agree to encourage Bargaining Unit employees to take the initiative to become familiar with the current electronic application process/technology identified in www.usajobs.gov (or its successor) and the associated tools available therein. This will help them set up their profiles, apply for vacancies and to become aware of what they can expect once the application process is initiated.

C. It is the employees' responsibility to be aware of open vacancy announcements and to meet application requirements for each announcement.

D. Employees may contact the local HR staff for general guidance.

F. Employees who are away from their normal duty station for extended periods of time, but are interested in vacancies that may occur are encouraged to check www.usajobs.gov site for vacancy information.

Section 11 - Interviewing

A. If interviews are used, they must be job-related, reasonably consistent, and fair to all candidates. Candidates, who are reasonably available, will be interviewed in person, by telephone, and/or by other technological means.

B. A Union representative may attend the interview panel as an observer for all merit promotion panel actions involving BUE's. The Selecting Official will notify the Union President when the panel will be convened. The Union representative will have the same access to the documents as the panel members and the same confidentiality restraints will apply.

Section 12 - Selection

A. The selecting official has the right to select or not select any candidates referred. However, the selecting official will give consideration to the candidates' fitness and qualifications, without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex, national origin, non-disqualifying handicapping condition, sexual orientation, or age. The selection shall be based solely on job-related criteria.

B. Documents relied upon for the selection process will be provided to the Union upon request. Request must be made no later than 30 calendar days from the date of notification of selection/non-selection.

Section 13 – Release and Notification of Applicants Within the Center

A. Human Resources will work with program officials to establish mutually agreeable release dates based on mission and program requirements.

B. Employees may be required to provide support to the losing work unit for up to 30 days from the date of selection and/or as mutually agreed to between program officials. When local workforce and program conditions permit, an employee will be released no later than two (2) complete pay periods for reassignments, following selection.

C. When an employee is nearing the end of a waiting period for a within-grade increase, the employee may request the Agency consider delay in the processing of the promotion action to obtain maximum benefit of the promotion. Actions will not be delayed for more than 30 days.

Section 14 - Career-Ladder Promotions:

A. Except as provided below, employees within a career ladder position will be promoted to the full performance level as soon as they have:

1. Met the time-in-grade requirements, AND
2. Have successfully met the requirements of the current and the next higher grade in the areas in which they have been provided an opportunity and the work is available to perform.

B. If a supervisor's review leads to the conclusion that the employee's performance does not warrant a promotion or that other factors exist that may delay a promotion, the supervisor will provide notice to the employee during the mid-year performance discussion and annual performance discussion. The discussion will explain where the employee's performance is lacking and advise what the employee must do to qualify for the promotion.

Section 15 - Compensation

An employee's level of compensation upon promotion shall be set in accordance with applicable regulations.

Section 16 - Promotion Records for Unit Positions

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

Section 17 – Information on Promotion Actions

Upon completion of the selection process, the Union may request the information used by the Center to make the selections. The Center will provide the requested information consistent with the requirement of law.

ARTICLE 24

ALTERNATIVE DISPUTE RESOLUTION (ADR)

Section 1 – Purpose and Commitment

A. The Parties acknowledge that ADR is a problem solving tool available for addressing workplace issues that may arise in the normal course of business.

B. The Center and the Union are committed to the use of ADR problem solving methods to foster a good labor management relationship. The Union and Center at all levels should be committed to the use of ADR problem solving methods as a priority to resolve disputed matters.

Section 2 – Definitions and Intentions

A. ADR is an informal process which seeks early resolution of employee(s), labor, and management disputes/concerns.

B. ADR should be effective, timely, and efficient. It should focus on conflict resolution and problem solving and foster a cooperative labor and management relationship. Participation in the ADR process must be voluntary.

Section 3 – Rights and Responsibilities

A. The parties have the responsibility of informing employees and management officials of the ADR option to resolve disputes. ADR should be undertaken in good faith to resolve disputes/concerns.

B. Employees are encouraged to seek information on the ADR process by contacting management's local designated point of contact or local Union Officials.

Both parties will:

1. Respond to questions about the ADR process; and
2. Provide information to employees on the ADR process.

C. Employees may utilize the ADR process to resolve interpersonal conflict(s)/concern(s). The Union and the Agency will encourage the use of ADR to resolve matters that are not of an egregious nature.

D. The employee(s) may request Union and Management to participate in all stages of the ADR process.

E. ADR resolutions are not precedent setting unless agreed to by the parties. Resolutions under the ADR process cannot conflict with or supersede agreements between the parties.

Section 4 - Process and Implementation

- A. The ADR process should start with written objectives between the parties as well as a commitment from all parties to resolve disputes in a non-adversarial manner.
- B. If the participants agree to reduce the resolution reached to writing, the terms of the resolution should be clearly articulated in the agreement and signed to be effective.
- C. ADR methods may include but are not limited to mediation, interest based problem solving, conciliation, facilitation, or the use of other readily available resources or tools.
- D. ADR methods may be used prior to or during a grievance/arbitration or statutory appeal by mutual agreement and in accordance with the Grievance, Article 26. In the use of ADR processes, contractual time frames may be stayed by mutual agreement. Statutory time frames cannot be stayed.

ARTICLE 25

DISCIPLINE AND ADVERSE ACTIONS

Section 1 – General

A. The Agency and the Union recognize that the public interest requires the maintenance of high standards of conduct. The objective of discipline is to correct and improve employee behavior so as to promote the efficiency of the service. Actions based solely upon unacceptable performance should be taken in accordance with Title 5, Chapter 43 and will be covered in Article 22, Performance Management.

B. The Parties agree to the concept of progressive discipline, when appropriate. Any level of discipline may be bypassed when the nature of the behavior/conduct makes a lesser form of discipline inappropriate.

C. Supervisors are encouraged to use coaching and/or counseling sessions prior to taking disciplinary action.

D. The parties agree to promote the concept of alternative discipline in appropriate circumstances.

Section 2 – Definitions

For purposes of this Article, the following general definitions are used:

1. A disciplinary action is defined as official written reprimands, or suspensions of 14 calendar days or less.
2. Adverse actions are defined as removals, suspensions of more than 14 calendar days, reduction in pay or grade or furloughs of 30 calendar days or less.
3. **Representative means "Union-designated representative" such as a steward or Officer or when applicable any other formally designated representative as selected by the employee per 5 U.S.C. § 7114(a) (5).**

Section 3 - Fairness and Timeliness

Disciplinary actions must be consistent with applicable laws, regulations, policy, and accepted practice within the Agency. If the Agency believes that disciplinary or adverse action is necessary, such action will be initiated in a timely manner after the Agency has completed an investigation of the alleged misconduct.

Section 4 - Coaching and/or Counseling (Non-Disciplinary Tools)

A. Prior to taking disciplinary action, supervisors are encouraged to use any of the following as non-disciplinary actions to correct the misconduct:

1. Coaching and/or counseling sessions;
2. Letters of Caution; and
3. Informational and instructional letters or their like.

B. These are not punitive nor are they disciplinary in nature. Rather, these are constructive instruments designed to correct behavior at the lowest possible level.

C. At the discretion of the supervisor, such letters, notations, or records may be maintained by the supervisor. Such records will be maintained to show that the employee was “on notice” of expected workplace behavior.

D. Coaching and/or counseling will be conducted privately and in such a manner as to avoid embarrassment to the employee, and to insure that there is no confusion as to the intent of the discussion/meeting.

Section 5 - Alternative Dispute Resolution (ADR)

A. The Parties recognize the shared interest in correcting behavior promptly and avoiding unnecessary or lengthy litigation. The employee or the Union may request the use of an ADR. However, the Agency retains the right to offer Last Chance Agreements (LCA’s), and other forms of alternative resolution.

B. Alternative resolution options, including LCA’s, are always voluntary in nature and require mutual agreement between the Agency and the employee prior to being executed.

Prior to offering an employee a form of ADR, the Union will be notified and given an opportunity to be present at any meeting in which the employee is offered such an agreement.

Section 6 - Reprimands

A. Reprimands are effective upon date of issuance to the employee. The reprimand will state the specific reasons for the action. Management agrees that the employee shall be given a reasonable amount of time (up to 2 hours), to review the information provided.

B. At the discretion of the Center additional time may be granted on a case by case basis. Two (2) copies of the reprimand will be provided to the employee. The employee may provide a copy of the reprimand to the Union. One (1) copy of any document(s) related to the action, will be provided to the requesting party (employee and/or Union) upon request. The parties agree grievance timelines will be preserved until such time as the evidence file has been received.

C. The reprimand will identify the employee's grievance rights, to whom a grievance would be filed, and the time frames for filing the grievance in accordance with Article 26, Grievance Procedures. The reprimand will also identify the period of time that it will remain in the employee's eOPF. At the conclusion of the retention period, the reprimand will be removed from the employee's eOPF.

Section 7 - Suspensions and Adverse Actions

A. An employee, for whom a suspension of 14 days or less or an adverse action is proposed, is entitled to a 30 calendar day written notice, prior to the effective date of the action, except when the crime provision has been invoked.

B. An employee for whom a suspension or an adverse action is proposed is entitled to a response period of 15 business days.

C. Notices will state specific reasons for the proposed action. One (1) copy of any document(s) related to the action, will be provided to the requesting party (employee and/or Union) upon request.

D. Management agrees that the employee shall be given the opportunity to use a reasonable amount of time (up to five (5) hours) to review the evidence on which the notice is based and that is being relied on to support the proposed action. At the discretion of the Center additional time may be granted on a case-by-case basis.

E. Two (2) copies of the decision letter will be provided to the employee. The employee may provide a copy of the decision letter to the Union.

F. The employee and/or representative may respond orally and/or in writing as soon as practical but no later than 15 business days from receipt of the proposed action notice. The response may include written statements of the persons having relevant information and/or other appropriate evidence. Extensions for replying to proposed adverse actions and suspensions may be granted when good cause is shown. Requests for extensions shall be submitted in writing.

G. In responding to a proposed disciplinary action, the employee is entitled to Union representation and will be responsible to secure such representation and to notify the Deciding Official (DO) of their election to be represented.

H. The written decision shall include the reason for the disciplinary action and a statement of findings and conclusions as to each charge. The decision shall also include a statement informing the employee that suspensions become part of the permanent record. The letter will also provide the employee's appeal rights and/or grievance rights. The Decision Letter will include the time period for filing a grievance and to whom it must be filed.

Section 8 – Investigation of Disciplinary Actions

A. Management will investigate an incident or situation promptly to determine whether or not discipline is warranted. Weingarten Rights will be afforded employees engaged in investigatory interviews in accordance with Article 5, Employee Rights.

B. Investigations will be conducted fairly and impartially. The Parties will remind employees of their responsibilities to answer all questions asked during an investigative interview fully and with candor.

Section 9 – Employee Notification of Investigatory Meeting

Employees will receive no less than a 24 hour notification of an investigatory meeting. The notification will include the date, time, location of the meeting, and the nature of the meeting. The employee and/or their representative will confirm their attendance and the election or declination of Union representation.

Section 10 - Removal of Disciplinary Records

A. Reprimands will be removed from an employee's files after a two (2) year period unless such action has been extended in writing or a subsequent infraction that referenced the reprimand has occurred.

B. At the election of the issuing management official, reprimands may be removed from the files at any time after one (1) year from the original effective date if the employee's behavior has improved and the discipline has served its purpose. The employee may request that the supervisor issuing the reprimand remove it after one (1) year with the following provisions: a) the employee can demonstrate the behavior has been corrected and b) only one request may be initiated by the employee.

C. Should the supervisor decide not to remove the reprimand after the employee makes the request for its removal it is understood that this decision is non-grieveable.

D. Suspensions become a permanent part of employee's official eOPF.

Section 11 - Administrative Reassignment

Administrative reassignments or demotions may be used when deemed to be the best corrective action. Appropriate procedures must be followed and appeal rights will be provided for decisions of reassignments or demotions made for reasons of misconduct.

Section 12 - Last Chance Agreements (LCAs)

A. Last Chance Agreements (LCAs) refer to situations in which the Agency agrees to hold in abeyance, an adverse action against an employee in exchange for the employee's agreeing to conform to specific conditions for a set period of time.

The understanding is that if the employee does not meet his or her obligation under the agreement, then the Agency is free to reinstate the adverse action under the terms of the agreement. The Parties recognize that LCAs are the employee's final choice between removal and adhering to the terms of the LCA.

B. The use of LCAs shall be offered at the Agency's discretion consistent with the facts of the case. The employee retains the right to accept or reject the offer of settlement. The Parties recognize that acceptance of the terms of a LCA are entered into voluntarily but are un-retractable upon signature.

C. Prior to offering an employee a LCA, the Union will be notified and given an opportunity to be present at any meeting in which the employee is offered such an agreement.

Section 13 - Self Incrimination

The right of employees not to incriminate themselves will apply in criminal investigations.

Section 14 – Serving of a Warrant and/or Subpoena

If the Center is aware that an employee is to be served with a warrant or subpoena, the Center will endeavor to see that it is served in private and without the knowledge of other employees.

ARTICLE 26

GRIEVANCE PROCEDURES

Section 1 – Purpose

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

Section 2 – Coverage and Scope

A. In accordance with 5 USC, 7103 (9), a grievance means any complaint:

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

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

1. any claimed violation of subchapter III of Chapter 73 of Title 5, USC relating to prohibited political activities;
2. retirement, life insurance or health insurance;
3. a suspension or removal under 5 USC, 7532 relating to national security;
4. any examination, certification selection or appointment; or
5. the classification of any position which does not result in the reduction in grade or pay of an employee;
6. separation of employees during their probationary period.

C. Adverse Actions appealed to Merit System Protection Board (MSPB).

Section 3 – Exclusivity

A. Grievances may be initiated by an employee(s) covered by this Agreement and/or their Union representative or by Management. Representation of BUEs shall be the sole and exclusive province of the Union.

B. Except as provided by law, this is the exclusive procedure available to BUEs, the Union or the Center for the resolution of grievances within its scope.

Section 4 – Representation

A. Prior to filing a grievance, an employee may elect to be self-represented or represented by the Union. When an employee elects to be represented by the Union, the Union President or designee will appoint that representative.

B. In accordance with 5 USC, Chapter 71, the Union has the right to be present during any proceeding under the negotiated grievance procedure. The Center will provide the Union reasonable advance notice, normally no less than 24 hours, of any grievance meeting/discussion when the Union is not the designated representative.

C. If the Union is not the designated representative, a copy of the grievance will be provided to the Union within five (5) business days of the filing date. A copy of each grievance decision will be timely provided to the Union.

D. An employee will be notified of their right to Union representation. At the time of notification, the employee and/or the Union will submit a written notification to management identifying the selection of Union representation or their declination of Union representation.

E. Management will forward the written notification of the election or declination of Union representation to the Union President or designee.

F. The Parties agree to develop a standard form that will be available to all employees on the shared drive.

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

H. The Parties agree efforts will be made to schedule meetings by mutual agreement within a reasonable time period.

Section 5 – Resolution of Grievances and Employee Standing

A. The Union and the Center agree that grievances should be settled in an orderly, prompt, and equitable manner so that the efficiency of the Center may be maintained and morale of employees shall not be impaired. Efforts shall be made by the Center and the Union to settle grievances at the lowest appropriate level of supervision. Employees and their representatives will be unimpeded and free from restraint, interference, coercion, discrimination, or reprisal, consistent with 5 USC, Chapter 71, and this Agreement, in seeking adjustment of grievances. Employees shall be authorized a reasonable amount of duty time, (requested in advanced and mutually agreeable with management), to prepare and participate in grievances, including individual or group grievances.

B. In cases of group grievances the Union may select a spokesperson(s) from the grieving group who can serve as a group representative to assure efficient use of government time.

Section 6 – Time Limits

A. Within 20 business days from the date of the event (or knowledge thereof) giving rise to the grievance, an employee or designated Union representative may file a written grievance.

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

Section 7 – Options

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

B. Similarly, an employee affected by a prohibited personnel practice under 5 USC, 2302 (b) (1) of the Civil Service Reform Act may raise the matter under a statutory procedure or the negotiated procedure but not both. An employee shall be deemed to have exercised his/her option at such time as he/she timely files a grievance in writing or files a formal complaint under the statutory EEO procedure, whichever event occurs first.

C. Complaints of employment discrimination may be raised as a grievance or as a statutory equal opportunity complaint, but not both.

Section 8 – Procedures for Employee Grievances

A. The written grievance should normally contain a description of the matter(s) being grieved, including:

1. The Article(s) of the Agreement, law, rule, or regulation alleged to have been violated, or to the employment condition in dispute;
2. a statement of the circumstances giving rise to the grievance including the date, if applicable, of the alleged violation;
3. the name of the management official(s) or others alleged to have committed the action grieved;
4. name and position title of the grievant(s) with work telephone number(s);
5. name of Union Representative (if any); and
6. desired relief.

B. Grievance meetings under this procedure normally will be face-to-face, although alternate options may be made available upon mutual agreement by the Parties. The grievant and the Union representative will meet with the designated management official and the Center representative (normally, the Labor Relations Officer). The Union and management may be permitted to have an equal number of representatives at all steps of the grievance procedure. If an Agency representative is designated, the Union will be apprised of who the representative will be. Normally, this notice will occur not less than three (3) business days in advance of the meeting.

C. Grievances may be hand delivered or delivered through e-mail. The recipient of the grievance shall sign and date the grievance if hand delivered or reply via email. If the grievance is delivered via e-mail and an acknowledgement of receipt of the grievance has not been received within seven (7) business days, the Parties will assume the grievance has been delivered and received. Timelines will be preserved if the serving party is able to show the grievance was delivered via email.

D. Management officials designated to be grievance deciding officials will have the authority to resolve the grievance. The designee will not be someone who decided the issue at a previous step.

E. Grievances should normally be resolved at the lowest level possible. However, there will be times when a grievance may be more appropriately initiated at a higher supervisory level, for example, when a disciplinary action is taken by the supervisor at the lower level or who clearly has no authority to resolve the issue. When a grievance is initiated at a higher supervisory level, specifically at Step 3, the time limits of Step 1 will apply (see Section 9 of this article).

F. Through mutual agreement of the Parties, the grievance timeline(s) will be placed in abeyance to allow the Parties to come to consensus or resolution prior to filing a grievance.

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

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

Section 9– Grievance Process

Step 1:

A. An employee and/or the Union shall present the grievance according to procedures in Section 8 (as listed above). The grievance will be in writing within 20 business days of the date that the employee or Union became aware, or should have become aware, of the act or occurrence, or anytime if the act or occurrence is of a continuing nature.

B. The management official receiving the grievance will meet with the grievant and/or representative, at the request of any Party, and provide a written answer within ten (10) business days of receipt of the grievance. The Step 1 management official receiving the grievance will meet with the grievant and/or representative, at the request of any Party, within five (5) business days of receipt of the grievance. The Step 1 official will provide the Step 1 response within ten (10) business days from the date of the meeting.

C. The grievance response will include the designation of the next level deciding management official to whom the grievance would be advanced, at the election of the grievant and/or representative.

Step 2:

A. If the grievance is not satisfactorily resolved at Step 1, it may be presented to the Step 2 management official or designee, named in the written decision letter within ten (10) business days of receipt of the response. The Step 2 management official receiving the grievance will meet with the grievant and/or representative, at the request of any Party, within ten (10) business days of receipt of the grievance. The Step 2 official will provide the Step 2 response within ten (10) business days from the date of the meeting.

B. The grievance response will include the designation of the next level deciding management official to whom the grievance would be advanced, at the election of the grievant and/or representative.

Step 3:

A. If the grievance is not satisfactorily resolved at Step 2, it may be presented to the Step 3 management official or designee, named in the written decision letter within ten (10) business days of receipt of the response. The Step 3 management official receiving the grievance will meet with the grievant and/or representative, at the request of any Party, within ten (10) business days of receipt of the grievance. The Step 3 official will provide the Step 3 answer within 15 business days from the date of the meeting.

B. If the grievance is not satisfactorily resolved in Step 3, the grievance may be referred to arbitration as provided in Article 27 Arbitration. Only the Union or Management can refer a grievance to arbitration.

C. Failure of management to observe the time limits for any level in the grievance procedure will entitle the employee to present the grievance at the next level. Failure of the employee or the representative to observe the time limits for any at any level in the grievance procedure will entitle management to consider the grievance resolved. If at any level of the grievance procedure set forth herein, the aggrieved employee or representative accepts the decision rendered by management and the grievance will be considered resolved.

Section 10 – Management Grievances

A. A management grievance concerning a continuing practice or a single event may be presented at any time and filed with the Union President. A grievance concerning a particular act or occurrence must be presented to the other Party within 25 business days of the action or date the moving Party became aware of it. The grievance will be filed at the Step 3 level; the Step 1 time lines will apply.

B. When a grievance is filed, the Parties will meet and/or discuss the matter within 15 business days after receipt unless the grieving Party waives the meeting/discussion or obtains an extension. A written decision will be issued within 15 business days of the meeting or of the date of waiver. If the grievance is not settled by this method, the grieving Party may invoke arbitration.

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

Section 11- Grievability/Arbitrability Questions

The Parties agree to raise any questions of grievability or arbitrability of a grievance prior to the limit for the written answer in the final step of this procedure.

ARTICLE 27
ARBITRATION

Purpose

This article shall be administered in accordance with the Federal Service Labor-Management Relations Statute, 5 USC, Chapter 71, and this Agreement. This article establishes the procedures for the arbitration of disputes between the Union and Center, which are not satisfactorily resolved by the negotiated grievance procedure found in Article 26, Grievance Procedures.

Section 1 – Notice to Invoke Arbitration

Only the Union or Management may refer to arbitration any grievance that remains unresolved after the final step under the procedures of the Article 26, Grievance Procedures. A notice to invoke arbitration shall be made in writing to the opposite Party, (Union President or designee or the Labor Relations Officer or designee), within 20 business days after receipt of the grievance decision rendered in the final step of the grievance procedure. If arbitration is not invoked within the 20 business days, the grievance decision will be final and binding.

Section 2 – Arbitration Procedure

A. On or after the date of the notice to invoke arbitration, the Party invoking arbitration will request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven (7) impartial persons to act as an arbitrator. Fees associated with obtaining said list will be paid by the Party invoking arbitration.

B. The Parties shall meet within ten (10) business days after receipt of such list to select an arbitrator (this may be done by telephone or other various means of communications). If the Parties cannot mutually agree on one of the listed arbitrators, then the Center and the Union will alternately strike one potential arbitrator's name from the list and will then repeat this procedure until one name remains.

C. The Party that invoked arbitration will select who strikes first. The remaining arbitrator shall be selected.

Following the selection, the Parties will within ten (10) business days notify FMCS of the name of the arbitrator selected. The Parties will jointly notify the selected arbitrator, dates and times will be mutually agreeable to all Parties. The time limits may be extended by mutual consent.

Section 3 – Procedures for Arbitration Hearing

A. The procedures used to conduct an arbitration hearing shall be determined by the arbitrator, with agreement of the Parties.

The Parties agree to follow these general guidelines:

1. Both Parties shall be entitled to call and cross-examine witnesses before the arbitrator. All bargaining unit witnesses necessary for the arbitration will be on duty time.
2. When necessary, management will schedule bargaining unit witnesses on duty status during the arbitration hearing. Such schedule changes may be made without regard to contract provisions on Hours of Work. If multiple witnesses will provide duplicate testimony, the Parties may agree to stipulate to the testimony and have one spokesperson speak on behalf of the group.
3. The grievant will be granted adequate duty time to prepare for and participate in arbitration.
4. A reasonable amount of preparation time for arbitration will be granted in accordance with the provisions of Article 7, Official Time and Duty Time.

B. The site of the arbitration normally will be the facility. If either Party wishes to have a change of venue from the Agency-provided facility, the requesting Party is responsible for the fees and costs associated with the change.

C. Union representatives and employees identified as witnesses will testify free from coercion, interference, dissuasion, and reprisal.

D. The Parties will attempt to submit a joint statement of issues to the arbitrator. If the Parties do not agree to file a joint submission, each shall make a separate submission. The arbitrator shall frame the issue or issues to be heard.

E. The Parties will be entitled to submit post-hearing briefs (including rebuttal briefs) or closing statements. It is further agreed that all documents given to the arbitrator are also provided to the opposing Party's representative at the same time.

F. The arbitrator's decision shall be final and binding. However, either Party may file an exception to the arbitrator's award in accordance with applicable law and regulation(s). Any dispute over the interpretation of an arbitrator's award shall be returned to the arbitrator for clarification.

G. The arbitrator will be requested to render a decision within 60 calendar days.

H. The Parties agree to exchange witness lists and/or information that is germane to the case with each other prior to the arbitration. Witness lists and/or other germane information to the case will be exchanged not later than ten (10) business days prior to the scheduled arbitration.

I. Questions raised as to whether a witness is necessary or if the information is germane, will be resolved by the arbitrator.

J. The time limits in this article may be extended by mutual agreement.

K. All arbitration awards will remain subject to the filing of “exceptions” in accordance with Federal Labor Relations Authority (FLRA) procedures in effect at the time of the arbitration.

The arbitrator shall be bound by the terms of this Agreement and shall have no authority to add to, subtract from, alter, amend or modify any provisions or change Agricultural Research Service (ARS) or US Department of Agriculture (USDA) policy and/or regulations.

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

Section 4 – Fees, Expenses, and Transcripts

A. The arbitrator’s fees and expenses shall be paid equally by the Parties. The Parties agree that upon receipt of the award and billing documents from the arbitrator, the fees will be paid in a prompt and timely manner.

B. If either Party request a transcript, that Party will bear the entire cost of such transcript. If a transcript is mutually requested, the cost will be paid equally by the Parties.

C. The cost of arbitration expenses for threshold or enforcement issues will be paid equally by both Parties.

D. If, prior to the arbitration hearing, the Parties resolve the grievance, any cancellation fees shall be equally shared by the Parties. If a Party requests postponement, the requesting Party shall bear the full cost of any rescheduling fees and/or postponement fees or any other possible associated fees.

Section 5 Arbitrator’s Award

The arbitrator shall render a written decision not later than 60 business days after the conclusion of the hearing unless the Parties mutually agree to extend this time limit. The arbitrator’s decision shall be final and binding except that either Party may file an exception (appeal) to the award with the Federal Labor Relations Authority (FLRA) under 5 USC, 7122 within 30 business days. The appealing Party shall promptly notify the other Party of such an appeal.

ARTICLE 28
SURVEILLANCE

General

The Parties recognize that surveillance is conducted for safety and internal security reasons.

Section 1 – Conditions

A. This article covers, but is not limited to: camera, video, access card swipes, telephonic, cell phone, computer, and other electronic devices.

B. If the Agency uses covert or hidden surveillance during an investigation, the following shall apply if a disciplinary or adverse action is proposed against an employee represented by the Union:

1. The Union will be given prior notification of the need to use covert and/or hidden surveillance;
2. The Union will be given a copy of all relevant evidence collected;
3. The Union will be provided a copy of the pertinent video tapes or other electronic media;
4. The only exception would be for issues of public safety or national security; and
5. The Union will be allowed to represent affected employees in any subsequent discussions or proceedings involving them.

C. The Union is not precluded from any further negotiations on the impact and implementation of covert or hidden surveillance.

D. No audio recordings may be made without mutual consent except for Inspector General Investigations (OIG), other law enforcement investigations, or EEO investigations.

ARTICLE 29

CONTRACTING OUT

Section 1 – General

A. The provisions of this article concern contracting out of work currently performed by BUEs.

B. The intent of this article is not to impede the day to day private sector contracts for work that are currently or likely to be determined to be necessary for limited time periods or for specific work projects, including but not limited to: lack of personnel, lack of specialized skills or equipment, etc.

Section 2 - Periodic Briefings

If a decision is made to contract out bargaining unit positions, periodic briefings will be held with the Union to provide information concerning any decisions that may impact unit employees in implementing OMB Circular A-76.

Section 3 - Site Visits

The Center will notify the Union if a site visit is going to be conducted for potential bidders seeking contracts for work performed by unit employees. A Union representative may attend such a site visit. The Union will be free to participate in the process but will not disrupt the site visit.

Section 4 - Union Notification

When the Agency determines that unit positions will be contracted out, the Center will notify the Union to provide them an opportunity to request to negotiate as appropriate.

Section 5 - Employee Placement

When permanent employees are adversely affected by a decision to contract out, the Agency will make maximum effort to find available positions for employees.

This effort will include:

1. Giving priority consideration for available positions within the Agency,
2. Utilizing Interagency Career Transition Assistance Program (ICTAP) and/or Career Transition Assistance Program (CTAP),
3. Establishing an employment priority list and a placement program, and
4. Paying reasonable costs for training and relocation that contribute to placement in accordance with Agency regulations.

Section 6 - Inventory of Contracted Activities

The Center will notify the Union of bargaining unit positions subject to contracting out. Upon request, a summary copy and/or a completed cost comparison will be made available to the Union.

ARTICLE 30

REDUCTION IN FORCE (RIF)

Section 1 - Purpose

A. The Agency and the Union recognizes that unit employees may be seriously and adversely affected by a Reduction in Force (RIF), reorganization, or transfer of function action. The Agency and the Office of Personnel Management (OPM) recognize that attrition, reassignment, furlough, hiring freeze, and early retirements are among the alternatives to RIFs that may be available. This article describes the exclusive procedures the Agency will take in the event of a RIF, reorganization, or transfer of function as defined in this article. It is also intended to protect the interests of employees while allowing the Agency to exercise its rights and duties in carrying out the mission of the Agency.

Section 2 - Definition

For the purpose of this article, the following terms are defined in law and regulations and are included for informational purposes:

A. Reduction-In-Force (RIF)

When the Agency releases a competing employee from his/her competitive level by furlough for more than 30 calendar days, or of more than 22 discontinuous workdays, separation, demotion, or reassignment requiring displacement when the release is required because of lack of work, shortage of funds, insufficient personnel ceiling, or reorganization, the exercise of reemployment rights or restoration rights, or reclassification of an employee's position due to erosion of duties when such action will take effect after the Agency has formally announced a RIF in the employee's competitive area and when the RIF will take effect within 180 days.

B. Transfer of Function

A transfer of function occurs when a function ceases in one competitive area and moves to one or more competitive areas which do not perform the function at the time of the transfer. Also included is the movement of an entire work operation to another commuting area.

C. Reorganization

Reorganization is the planned elimination, addition, or redistribution of functions or duties of an organization or work unit.

D. Competitive Area

An area in which employees compete for retention is known as a Competitive Area. A competitive area must be defined solely in terms of the Agency's organizational units and geographical location; and it must include all employees within the competitive area as defined.

E. Competitive Level

The Parties agree that OPM regulations fully define competitive level. Employees are assigned to competitive levels based on their position of record. The competitive level consists of positions that are in the competitive area in same grade (or occupational level) and classification series and which are similar enough in duties, qualification requirements, pay schedules, and working conditions. The incumbent of one position can successfully perform the critical elements of any other position upon entry, without any loss of productivity beyond what is normally expected in the orientation of any new but fully qualified employee. (The terms competitive level and retention register generally have the same meaning.)

F. Retention Register

The retention register is the ranking of employees in the competitive level after the Agency applies the four (4) retention factors. The four (4) retention factors are: tenure of employment, military preference (subject to section 5 CFR, 3501 (a) (3)), length of service, and performance rating. (The terms competitive level and retention register generally have the same meaning.)

G. Bump and Retreating

Bumping means the displacing of an employee on a different competitive level who is in a lower tenure group, or in a lower subgroup with the released employee's own tenure group.

Retreating means the displacing of an employee on a different competitive level with less service within the released employee's own tenure group and subgroup.

H. Identification Method One and Identification Method Two

Under Identification Method One procedure, the losing competitive area identifies an employee with a transferring function if: the employee performs the function during at least half of the employee's work time or regardless of the amount of time that the employee performs the function, the function includes the duties controlling the employee's grade or rate of pay.

Under Identification Method Two procedure, the losing competitive area identifies for transfer the number of employees it needs to perform the functions. The losing competitive area uses Identification Method Two only to identify positions and employees not covered by Identification Method One.

Section 3 - Applicable Laws and Regulations

A. For purposes of Title 5 employees, the policy, procedures, and terminology described in this article are to be interpreted in conformance with 5 USC, 3501-3504, 5 CFR, Part 351, OPM guidance, and other applicable government-wide laws and regulations. Any changes or revisions to the published procedures will be subject to normal notification and negotiation protocols.

B. Recognizing the potential disruptive impact that a RIF may generate, the Parties agree to use RIF after careful consideration and utilization when possible, of less invasive tools such as those described above.

Section 4 - Application

The Agency agrees to fairly and equitably apply this article and any laws or regulations relating to any matter in this article.

Section 5 - Union Notification

Management officials of the Center shall be responsible for properly notifying the Union President or designee in conjunction with any of the actions described in this article.

A. For actions covered by this article, the Agency and/or Center agrees to notify the Union as described below:

1. Management will notify the Union at the earliest possible date, but no later than 90 calendar days prior to the effective date.
2. All notices to the Union will be given in writing prior to any notice to affected unit employees.

B. The notice to the Union under this section shall consist, at a minimum, of the following information:

1. The reason for the action;
2. The approximate number, types, and geographic location of position(s) initially affected; and
3. The approximate date of the action.

C. The parties may elect to engage in collective bargaining with respect to the implementation and impact of this process as soon as practicable.

Section 6 - Freezing of Vacancies

The Agency will freeze all relevant vacant positions within the Center 60 days prior to the effective date of a RIF. The Agency may elect to fill vacancies after the conclusion of the RIF actions initiated during the life of the RIF. When the Agency decides to fill a vacant position after the effective date of the RIF, whether previously frozen by virtue of RIF or in the creation of new vacancies, employees who have been demoted through the application of RIF procedures will be offered the vacancy provided the employee is qualified or has been given a waiver of qualifications for the intended position. Employee entitlement to this special consideration shall be determined in accordance with the Merit Promotion, Article 23.

Section 7 - Employee Notification

An individual employee who is adversely affected by actions stated in this article shall be given a specific written notice not less than 60 calendar days prior to the effective date of the action. All such notices shall contain the information required by the OPM regulations in addition to the information required by this article.

Section 8 - Content of Employee Notices

The content of the specific notice shall include the following information:

1. The specific action to be taken;
2. The reason for the action;
3. The effective date of action;
4. The employee's competitive area, competitive level, subgroup and service date, and the three (3) most recent ratings of record received during the last four (4) years;
5. The place where the employee may inspect the regulations and records pertinent to his/her case;
6. Information on reemployment rights (except as permitted by 5 CFR, 351.803 (a)); and
7. The employee's grievance or appeal rights.

Section 9 - Employee Information

The Agency shall provide information and assistance to impacted employees by:

1. Informing all employees of the extent of the affected competitive area, the regulations governing such action, and the kinds of assistance provided to affected employees;
2. Notifying employees of all regular competitive vacancies the Agency wishes to fill by advertising on www.usajobs.gov or its successor; and
3. Conducting a placement program within the Agency in accordance with applicable government wide rules/regulations. The placement program will include counseling for employees by qualified personnel on opportunities and alternatives available to affected employee(s).

Section 10 - Personnel Files

At the written request of an employee, the Union may review any BUE's eOPF if the employee believes that the information used to place him/her on the retention register is inaccurate, incomplete, or not in accordance with laws, rules, regulations, and provisions of this article.

Section 11 - Records

A. The Agency will maintain all lists, records and information pertaining to actions taken under this article for at least one (1) year in accordance with applicable rules and regulations after the date it issues a specific reduction in force notice.

B. A copy of the retention register will be made available to the Union at the earliest possible time. In addition, the Union is entitled to see employee requested Agency records that detail their bump and retreat records.

C. An employee who has not received a specific reduction in force notice has no right to review the Agency's retention registers and related records.

Section 12 - Employee Use of Authorized Time and Agency Facilities

A. Employees who are identified for transfer of function or separation as a result of RIF under this article shall be entitled to reasonable amount of duty time (at least 40 hours) for:

1. Preparing, revising and reproducing job resumes and/or job application forms;
2. Participating in employment interviews;
3. Using the telephone to locate suitable employment; and
4. Reviewing job bulletins, announcement, etc.

B. Such employees will also be entitled to reasonable use of the following facilities and/or services for the purpose of locating suitable employment: telephone, reproduction equipment, interagency messenger mail, email, and counseling (i.e., employee assistance program(s)).

Section 13 - Performance Appraisals

Annual performance appraisals for purpose of retention standing will be frozen 30 days prior to the issuance of the notice of action. The three (3) latest annual appraisals of record during the four (4) year period prior to the cut-off date for accepting performance ratings will be used to determine eligibility for additional credit toward an employee's service computation date. To be credited under this section, an appraisal must have been issued to the employee with all appropriate reviews and signatures and must be on record.

Section 14 - Career Transition Assistance Program (CTAP) and Inter-Agency Career Transition Assistance Program (ICTAP)

A. The Agency will notify employees of the services available under its Career Transition Assistance Program (CTAP) and Inter-Agency Career Transition Assistance Program (ICTAP) and how to obtain them.

B. The Agency will notify eligible employees of their selection priority consideration in USDA and other Federal Agencies under the Agency CTAP and ICTAP if they apply and are found to be well qualified.

Section 15 - Employee Response to Specific Notice

Upon receipt of specific notice notifying the employee that he/she is offered a reassignment or change to lower grade or will be released from his/her competitive level, the employee shall have 15 calendar days in which to accept or reject the offer made. If a position with a higher representative rate or grade (but not higher than the rate or grade of the employee's current position) becomes available on or before the effective date of the RIF, the Agency will make the better offer to the employee. However, making the better offer will not extend the 60 day notice period.

Section 16 - Displaced Employees

The Agency shall provide any employee to be separated by RIF or transfer of function with the appropriate contact information regarding unemployment benefits available to them.

Section 17 - Details

Employees on detail will not be released during a RIF from the position to which they are detailed but, rather, from the affected employee's permanent position of record.

Section 18 - Transfer of Function

This section only applies when a transfer of function is used.

A. When a transfer of function occurs, the Agency will first solicit qualified volunteers for transfer from among those employees in positions that have been identified for transfer only if no competing employee who is identified under Identification Method One or Identification Method Two will be separated or demoted solely because a volunteer transferred to the gaining competitive area. If there are not enough qualified volunteers from among these affected employees, the Agency will solicit qualified volunteers from the competitive area.

B. If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area may give preference to the volunteers with the highest retention standing, or make selections based on other appropriate criteria.

In the event there are not enough volunteers for the transfer, the Agency will identify employees for transfer according to Identification Method One and/or Identification Method Two.

C. Whenever possible, affected employees who do not volunteer to be transferred shall be reassigned to vacant positions within the competitive area for which the employee is qualified and which the Agency has determined to fill.

Section 19 - Repromotion Rights of Affected Employees

For a period of two (2) years from the date of demotion, affected employees demoted by an action covered by this article will be repromoted to vacancies as they occur according to the following criteria:

1. The Agency determines to fill the vacancy;
2. The employee has the requisite skills and abilities for the position without undue interruption; and
3. Another qualified employee does not have a higher retention standing.

Section 20 - Reemployment Priority Rights of Affected Employees

A. The Agency will inform employees of their right and responsibility to complete a reemployment application. The Agency will provide the employee with a point of contact for personal assistance with the reemployment application.

B. Career and career-conditional employees, who have received a specific RIF separation notice or a Certificate of Expected Separation and submit a complete Reemployment Priority List (RPL) application to Human Resources, will be entered on the USDA RPL for the commuting area in which they are qualified and available. Agency components must use the RPL in filling vacancies before offering employment to an individual from inside or outside the agency, unless it meets one of the exceptions in 5 CFR, 330.211. Employees may remain on the list for two (2) years from the date of RIF separation unless removed earlier based on the occurrence of one of the events in 5 CFR, 330.208

ARTICLE 31

MATTERS APPROPRIATE FOR NEGOTIATIONS

Section 1 - General

The Parties agree that matters appropriate for negotiations are outlined in the statute at 5 USC, Chapter 71.

Section 2 – Non-negotiable Items

If Management declares an item non-negotiable, it will provide the Union with a brief written description of why such a determination was made. If the Union disagrees with the Management's written determination of non-negotiability, it may seek further consideration in accordance with 5 USC, Chapter 7117.

Section 3 – Advance Notice Regarding Initiatives and /or Changes Working Conditions

The Parties agree the Union will receive advance notice with regard to Management initiatives and/or changes to working conditions at least 30 calendar days in advance or as soon as practicable.

Section 4 – Written Notice, Extensions, Implementation

A. The Parties recognize the importance of efficiency of operations to meet the changing needs of the Center and the American public that we serve. To this end, the Parties agree that when the Center provides written notice to the designated Union Official(s) of a proposed change(s) in personnel policies, practices and working conditions, it will include readily available documentation/information supporting the reason for the change. Should the Union elect to negotiate, the Union will respond with written negotiable proposals within 10 business (Monday-Friday, excluding weekends and holidays) days of receipt of the Center's notification/proposal. Union proposals must be within the realm of the changes being proffered. Union proposals will be submitted to the identified Center Official, with a copy to the designated Labor Relations Officer, or their designee. If the Union elects not to respond, or if written proposals are not submitted within the time limit, the Center will have no obligation to bargain on the matter and may implement the change(s).

B. Extensions may be granted by mutual agreement provided there is no adverse impact on the Center for granting the delay.

C. Changes will not normally be implemented until all bargaining obligations are met. If extenuating circumstances occur, the Center will notify the Union of the situation as soon as is practicable, and the Parties may agree to post-implementation bargaining on changes in working conditions.

ARTICLE 32

MID-TERM BARGAINING

Section 1- Purpose

A. This article shall be administered in accordance with 5 USC, Chapter 71, and this Agreement. The purpose of this article is to prescribe the criteria and procedures by which the Parties shall engage in negotiations during the term of the Agreement.

B. Matters appropriate for mid-term bargaining shall include those issues within the scope of bargaining, as proposed by either Party which are either newly formulated or substantive changes which affect working conditions.

Section 2- Procedures for Negotiating During the Term of the Agreement

A. Either Party may propose changes in conditions of employment during the life of the Agreement which is not already covered specifically by the Agreement. The initiating Party will provide the other Party with reasonable advance written notice, as soon as practicable, prior to the proposed implementation date of any change affecting conditions of employment.

B. The notice will at a minimum, contain the following information:

1. A detailed description of the change;
2. An explanation of the initiating Party's plans for implementing the change, and a description why the change is necessary (if known); and
3. The proposed implementation date.

C. Employer notices of change(s) will be sent to the Union President or designee and any request to bargain and/or written proposals from the Union will be sent to the Center Director, or their designee, and Labor Relations Officer or designee.

D. Either Party may request to be briefed on the proposed change(s) prior to the demand to bargain notice is submitted.

1. The receiving Party will review the proposal and may respond to the initiating Party in the following ways:
 - a. If the receiving Party wishes additional information or an explanation of the proposal, that Party may, within five (5) business days of receipt of the notice, make a written request for a briefing (informal discussion) by the initiating Party, and/or for additional information, in order to clarify or determine the impact of the proposed change; or
 - b. If the receiving Party wishes to negotiate over any aspect of the proposed change, it shall notify the other Party by submitting a demand to bargain within ten (10) business days of receipt of the notice. Proposals will follow within ten (10) business days after the demand to bargain is submitted. If the initiating Party is unable to meet within the prescribed time frames the timelines can be extended.
 - c. Upon request by the receiving Party, the Parties will meet (the preferred meeting will be face to face but teleconference or other technologies may be utilized by negotiators outside of ERRC) and negotiate in good faith through appropriate representatives for the purpose of collective bargaining as required by law and this Agreement.
 - d. Following this request to negotiate, the Parties will schedule a meeting to begin negotiations as soon as possible, normally no later than 15 business days from the receipt of the receiving Party's proposal.
 - e. Implementation shall be postponed to allow for the completion of bargaining, up to and including negotiability disputes and/or impasse proceedings, except as required by law.
 - f. An emergency is an unforeseen combination of circumstances or the resulting state that calls for immediate action. In the case of an emergency, management will notify the exclusive representative prior to meeting with employees, and will meet their bargaining obligation. The Union understands that, under rare and extraordinary circumstances, delayed notification and post implementation bargaining may be necessary.

E. The Parties agree to establish written ground rules for the above proceedings.

F. Agreements reached between Parties will be in writing and submitted for Agency Head review. If no conflict with law, rule or regulation is found upon Agency Head review of the Agreement, the Branch Chief, Labor Relations or designee, will notify the Union and the Agreement will take effect upon notification.

ARTICLE 33

DURATION OF AGREEMENT

Duration and Process of Renewal

A. The effective date of this Agreement shall be the date of approval by the Director, Office of Human Resources Management (OHRM), Office of the Secretary of Agriculture, or on the 31st day after execution of the agreement, if the Director or designee has neither approved nor disapproved the Agreement.

B. It shall expire five (5) years after the effective date. It will remain in effect for yearly periods thereafter, automatically renewing on the anniversary date of the original effective date unless either Party serves written notice of its desire to terminate or modify this Agreement. Written notice will be served no less than 60 calendar days prior to the expiration date and not more than 120 calendar days.

C. Pursuant to section B of this article, the Parties shall meet within 90 calendar days of the receipt of notice to terminate or modify the Agreement. Upon notification, the Parties agree the Agreement will be extended until the effective date of the modified Agreement.

1. The current agreement shall remain in effect until the new agreement is executed.
2. The Parties agree to establish written ground rules for the negotiation process.

D. The Agreement will not be effective at any time after it is determined that the Union is no longer entitled to exclusive recognition or after such recognition has been relinquished.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Agency Head Review was served on this day, February 16, 2017, to the ARS, Eastern Utilization Research and Development Division and AFGE Local 1331 regarding the renegotiated Collective Bargaining Agreement:

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ARS
C.JacobsYoung@arsa.usda.gov via E-mail

Roberta Jeanquart, Chief Human Capital Officer
Office of Human Resources Management (OHRM)
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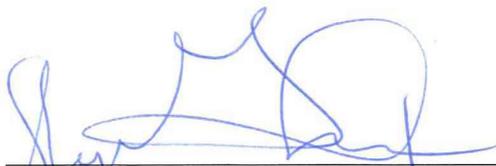
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