

September 2003

LABOR AGREEMENT

Between

Agricultural Research Service
USDA

and

Local 43
American Federation of
Government Employees

At the Appalachian Fruit Research Station



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ARTICLE I

RECOGNITION

Section 1

This agreement is made and entered into by and between the Appalachian Fruit Research Station (AFRS), Kearneysville, West Virginia, Agricultural Research Service (ARS), United States Department of Agriculture (USDA); hereinafter referred to as the "Station" or "Management" and the American Federation of Government Employees (AFGE), Local 43; hereinafter referred to as the "Union" or "Bargaining Unit," and collectively known as the "Parties."

Section 2

Management hereby recognizes the Union under the provisions of Chapter 71 of Title 5 of the U.S. Code as the sole and exclusive representative for all employees in the Bargaining Unit which is defined as follows:

The representation Unit to which this Agreement applies includes all non-professional employees of the AFRS, ARS-USDA, excluding confidential employees, employees engaged in federal personnel work in other than a purely clerical capacity, management officials, professionals, as outlined in Title 5, Code of Federal Regulation (CFR) 7103 (15) (A) and (B), and supervisors.

Section 3

Management and Union agree that the terms and conditions of this Agreement apply to all employees in the Bargaining Unit.

ARTICLE II CONTROLLING AUTHORITY

In the administration of all matters covered by this Agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities including policies set forth in the 5 CFR; by published agency policies and regulations in existence at the time this Agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level.

**ARTICLE III
RIGHTS AND RESPONSIBILITIES OF THE STATION**

Section 1

Management officials of the agency retain the right, in accordance with Title 5, United States Code (USC) 7106, to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and in accordance with applicable laws to:

- a. hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
- b. assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
- c. make selections for appointments with respect to filling positions from among properly ranked and certified candidates for promotion, or other appropriate sources; and
- d. take whatever actions may be necessary to carry out the Agency's mission during emergencies.

Section 2

Management officials and supervisors retain the right to meet with Bargaining Unit Employees and without the presence of a Union representative concerning any matter that is not a condition of employment, as stated in 5 USC 7114 (a) (2).

Section 3

When the Station and the employee are making arrangements for the employee's oral reply to the Station's proposal to take adverse or disciplinary action for misconduct in accordance with 5 CFR 752, the Station may permit not more than one workday delay to allow the employee's designated representative to be in a duty status during the oral reply. All provisions of Section 3 are as outlined in Article XXXI.

Section 4

The requirements of this Article shall apply to all supplemental agreements between the Parties.

**ARTICLE IV
UNION / EMPLOYEE RIGHTS AND RESPONSIBILITIES**

Section 1

As provided by 5 USC, Section 7102, "Each employee shall have the right to form, join, or assist any labor organization, or to refrain from such activity, freely and without fear of penalty or reprisal. Each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right:

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

Section 2

As provided by 5 USC 7114(a) (2): "An exclusive representative of an appropriate Unit in an Agency shall be given the opportunity to be represented at;

- a. any formal discussions between one or more representatives of the Agency and one or more employees in the Unit, or their representatives concerning grievances or personnel policy or practices or other general conditions of employment, or;
- b. any examination of an employee in the Unit by a representative of the 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,"

(3) employee and/or representative may request to caucus for a period not to exceed 20 minutes to offer time to present issue.

If the employee requests representation, no further discussion will take place until a Union representative is present. However, the employee may waive Union representation.

Section 3

If the employee is to be served with a warrant or subpoena, where possible, it will be done in private without the knowledge of other employees.

Section 4

In dealings between Management and Bargaining Unit Employees, both Parties shall treat each other with dignity and respect. For example, there should be no verbal abuse, and Bargaining Unit Employees will be dealt with in a fair and equitable manner. When Management wishes to discuss matters of misconduct that are of a sensitive nature with an employee, it should be done in private, away from other employees whenever possible. In accordance with Section 2, the employee shall have the right to exercise the option to request a Union representative.

Section 5

The Employer shall not take or fail to take personnel action with respect to the employee as a reprisal for the exercise of appeal and/or grievance rights granted by law, rule, regulations, or the terms of this Agreement.

Section 6

Employees will not be subjected to prohibited personnel practices as defined in 5 USC 2302.

Section 7

Employee participation in charitable drives such as the Combined Federal Campaign and United States (U.S.) Savings Bond campaigns is voluntary. The parties will make a good faith effort that selection of coordinators of such activities will be voluntary or some other fair and equitable manner will be adopted. No solicitations (other than those approved by the Station) may be made, and no pressure will be brought to bear to require such participation.

Section 8

In the performance of his/her duties, or when acting within the scope of their employment, the employee is entitled to all protection of the Federal Employees Liabilities Reform and Tort Compensation Act of 1988, (P.L. 100-694).

Section 9

Meetings away from the facility, scheduled by the Employer, and attended by Bargaining Unit Employees, may entitle those employees to official time and/or travel status requiring the reimbursement of employee travel expenses according to the current General Services Administration per diem allowances, if applicable.

Section 10

Bargaining Unit Employees of AFRS shall be notified if Management implements monitoring software and/or hardware, including but not limited to security cameras, recording devices, key-stroke counting, software, and software for monitoring personal e-mail accounts.

Section 11

Employees will be allowed to use personal radios when the use of such does not adversely affect the employees' performance and/or the work environment of others.

With the prior approval of a supervisor and the Administrative Officer, employees will also be allowed to use their personal microwave ovens and coffee makers. All personal appliances shall conform to safety regulations and the use of such shall not adversely affect the employees' performance and/or the work environment of others. It shall be the employee's responsibility to ensure compliance. No other private appliances will be allowed to be used at the Station.

The Station may buy TV sets and radios only if they are determined to be needed for accomplishing the Station's mission. However, the employees will be allowed to use the Station-owned radios and TV sets during lunch time if such use will not conflict with the mission of the Station. The Station will also provide refrigerators and microwaves for storing and warming up food, respectively, in lunchroom areas for the employees to use. The Management, however, reserves the right to remove these appliances if it determines that they are not used safely, according with their designated purpose, or are not kept in a sanitary condition by the employees. Cleaning lunch rooms' refrigerators, microwave ovens, and other kitchen appliances provided by the Station is the employees' responsibility.

Section 12

Computers shall be placed at the Farm Center and have working e-mail and internet access for each employee stationed there. Each permanent employee shall have their own individual account. There shall be at least 1 computer for every 3 permanent employees.

These computers shall be placed in a reasonable location decided by the Management with input from the staff.

ARTICLE V UNION REPRESENTATION

Section 1

In addition to the officers and stewards of Local 43, AFGE, the Station agrees to recognize the national and district officers of the AFGE. Union national and district representatives will be provided access to AFRS, Kearneysville, WV for representational duties in accordance with rules and regulations pertaining to all visitors.

Section 2

Annually the Union shall provide the AFRS, Kearneysville, WV Station Director, with a current list of designated stewards and officers at the Station. Management will be notified of any changes to the approved list. These designated stewards shall be recognized as employee representatives for Bargaining Unit Employees, and shall be entitled to the use of official time, subject to the approval by Management, under the provisions of this agreement.

Section 3

Each Union representative shall notify his/her immediate supervisor when there is a need to perform representational duties under Section 3 of this Article. Supervisors shall make a steward available for such business within a reasonable time. A steward entering a work area that is not his or her own will report to the supervisor-in-charge upon arrival and departure. The steward shall also notify their immediate supervisor upon their return to their own work site. If circumstances permit, the supervisor will approve requests of reasonable official time for such business within a reasonable time. Before entering a work area under a supervisor other than his/her own, the Union representative or steward will contact the supervisor of the employee(s) and state the general nature of the Union-Management business he/she intends to transact. The supervisor will, circumstances permitting, make the employee available. There may be occasions when the workload will prevent the granting of such time until a later time but no later than 24 hours unless by written mutual agreement of the parties. Upon leaving work areas and returning to their own work area Union officials will inform the responsible supervisors of their status.

Elected Union officials shall be determined in accordance with the Union constitution and by-laws. The Vice-President and other elected officials will be authorized to use mutually agreed upon amounts of official time, if needed, to perform appropriate representational duties, recognizing that these duties can also include those which are customarily the responsibility of recognized Shop Stewards.

Recognizing the need to promote efficiency and to increase productivity, it is agreed that not more than one official or steward may be authorized duty time to represent an employee, participate in meetings with the employer, or perform other appropriate and authorized representational duties. Exceptions may be granted in individual cases by the appropriate supervisor or manager.

Section 4

Recognized Union representatives agree to schedule official Union business as follows:

- a. Ensure the availability of a conference/meeting room (if required).

- b. Complete a "Request for Official Time for Union Duties" form and obtain prior approval from the technical supervisor and the supervisor of record.
- c. Provide the AFRS Administrative Officer a copy of the approved form.

Section 5

The Union agrees to comply with 5 USC 7131(b) which prohibits the conduct of internal Union business while in a duty status.

Section 6

Except in cases of an emergency, Management agrees to inform the Union prior to transferring/detailing the Vice President and/or Chief Shop Steward from their tour of duty.

Section 7

The Station will provide the Union with a Position Organizational Listing or an alphabetical roster semiannually.

Section 8

The Station will allow recognized Union representatives official time during each year of this agreement to attend training of mutual interest to the Union and the Station. Total cumulative hours allowed for labor relations training will not exceed 64 per year for the entire Bargaining Unit. The Union will recommend the Union Representatives who will attend on a rotational basis.

**ARTICLE VI
LABOR MANAGEMENT RELATIONS COMMITTEE**

Section 1

During the first year of this contract the AFRS Director or his/her designee will meet on a bi-weekly basis with two Union officials to facilitate communications and implementation of this contract and/or pertinent issues or concerns for both parties. The meetings will be non-adversarial and will follow an agenda submitted by the Union or Management at least one workday prior to the meeting and will last up to 60 minutes.

In subsequent years during the life of the contract, meetings will be held as needed and mutually agreed upon by both parties.

Section 2

Management and the Union recognize the need for periodic awareness seminars pertaining to items such as but not limited to: employee benefits, performance management system, and workplace atmosphere.

**ARTICLE VII
NEGOTIATIONS AND DISCUSSIONS**

Section 1

As provided by 5 USC 7106(b), "Nothing in this Section shall preclude Station or labor organization from negotiating at the election of the Station:

- a. on the numbers, types, and grades of employees or positions assigned to organizational subdivision, work project, tour of duty, or on the technology, methods, and means of performing work;
- b. procedures which Management officials of the Station will observe in exercising authority under this Section; or
- c. appropriate arrangements for employees adversely affected by the exercise of authority under this Section by such Management officials."

Section 2

The Union will be advised of new or proposed changes to established personnel policies and practices or other matters affecting working conditions of employees in the Unit.

- a. The Union will be advised of new or proposed changes to conditions of employment sufficiently in advance and in such specificity to provide the Union with opportunity to request negotiation of Impact and Implementation (I&I). The notice will include the description of the change or proposed change; an explanation of how the change will be implemented; the date of implementation or proposed implementation; and the impact.
- b. The Union will be given the opportunity to discuss the proposal with Management on official time and may make written or oral comments, suggestions, or alternative proposals.
- c. Management will give serious good-faith consideration to views or proposals raised by the Union during I&I negotiations with respect to the implementation of the change.

Section 3

To implement the procedures described under Section 2 of this Article, The Parties shall establish a committee composed of not more than three (3) members appointed by each party. Formal requests for meetings shall be initiated only by the Station Director, and the Union Vice President, or those acting in such capacities. The committee shall meet at the request of either Party upon at least twenty one (21) calendar days' notice, unless otherwise mutually agreed when verbal discussion is desired.

Each Party shall notify the other in writing of the three (3) members appointed to the committee. Changes shall also be in writing. In addition, either Party or both may designate a participating observer to a committee meeting. A written summary of the matters discussed and agreed to at these meetings will be prepared by the Station within seven (7) calendar days of the date of the meetings; such summary will be furnished to the Union. The summary will be deemed satisfactory, unless either party notifies the other of suggested changes within twenty one (21) calendar days of receipt. If the changes are not mutually agreed upon, they shall be attached to the summary as an addendum.

Section 4

If changes in law or regulation render provisions of the Agreement inoperative, the Parties shall meet at a mutually agreeable time [within ninety (90) calendar days] at the request of either Party, to renegotiate the affected provisions of the Agreement. Such negotiations shall be limited to those provisions rendered inoperative and shall not include other matters.

**ARTICLE VIII
COOPERATIVE RESOLUTION PROGRAM (CRP)**

Employees who wish to use the CRP (a voluntary program that uses mediation to resolve disputes) have the right to use the program. If the issue is not resolved by mediation, the time frames for filing a negotiated grievance shall not start until all efforts in mediation have been exercised.

The mediation process shall be completed within fifteen (15) calendar days. Time may be extended by mutual agreements. At the end of this time either party may proceed with established procedures, if no resolution is reached.

**ARTICLE IX
EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

Section 1

It is agreed between the Parties to cooperate in providing equal opportunity and preventing discrimination against any employee based on age, sex, race, religion, color, national origin, or disability.

Section 2

Employees will be provided a current telephone list of the USDA counseling program and information on the EEO complaint system and counselor duties. The Employer will post information on the EEO Counseling program in an area frequented by employees.

Section 3

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

Section 4

The Employer shall continue to conduct training and provide information on EEO and sexual harassment policies.

Section 5

The Station is committed to affirmative action for the employment, placement, and advancement of qualified individuals with disabilities and disabled veterans in accordance with 29 CFR 1614 and 1630, as applicable.

The Station, upon employee request, will offer reasonable accommodation of the known physical or mental limitations of qualified individuals with a disability regardless of the type of appointment, unless the Station can demonstrate that the accommodation would impose an undue hardship on the operation of the Station.

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

Both Parties recognize that reasonable accommodation means an adjustment made to a job and/or the work environment that enables a qualified person with a disability to perform the duties of that position. The Station will eliminate undue delay in considering requests for reasonable accommodations for employees with disabilities. Such accommodations are to be considered as exceptions to the general restrictions; and will be evaluated on a case-by-case basis with regard to the merit of the request.

Should a non-probationary employee become unable to perform the essential functions of his/her job, even with reasonable accommodation due to a disability, the Station will seek to reassign the employee when a funded vacant position is available and the other conditions in 29 CFR 1630 are met.

Section 6

Bargaining Unit Employees may file an EEO complaint using procedures encoded in law, rule, or regulation. Bargaining Unit Employees have the right to consult AFGE, National Office and/or National Representative to be represented by AFGE in their case.

**ARTICLE X
EMPLOYEE ASSISTANCE PROGRAM (EAP)**

Section 1

The Parties jointly affirm their support for the EAP, which is available to Bargaining Unit Employees who have problems which require professional assistance.

Section 2

Unit employees will be provided appropriate opportunities to participate. It is recognized that counseling under this program is voluntary and confidential in nature.

Section 3

Information on EAP will be posted on employee bulletin boards. Management will provide information to employees about EAP upon request.

Section 4

The EAP is available and may be contacted periodically to give informational presentations.

**ARTICLE XI
AUTHORSHIP**

The Parties recognize that the designation of authorship is an issue of scientific ethics. In recognition of the above the Parties agree that a good faith effort will be made by Management to comply with Research, Education, and Economics (REE), Policies and Procedures (P&P), 152.2, Authorship of Research and Technical Reports and Publications.

The REE, P&P, 152.2, Authorship of Research and Technical Reports and Publications, will be made available for all Bargaining Unit Employees.

**ARTICLE XII
ATTENDANCE AT PROFESSIONAL MEETINGS, CONFERENCES,
AND JOB RELATED TRAINING**

The Union recognizes Management's discretion and right to assign work which includes the participation in meeting/conferences/training. The Parties agree that attendance by technical support staff at professional meetings/conferences/training is a way for the staff to become more familiar with current research. The Parties agree that the current research available at these meetings/conferences/training may include more efficient or safer techniques. The Parties also agree that by continually training technical support staff in current methods of research the mission of the Agency may be executed more efficiently and safely.

**ARTICLE XIII
OFFICE SPACE**

Section 1

The Station shall supply sufficient locker space to accommodate employees. These lockers will be in the temperature controlled portion of the building. There will be a minimum of 30 lockers available. These lockers will be a minimum of 60 x 10 x 12. The maximum number of lockers is limited to availability of appropriate space.

Section 2

Management will make a good faith effort to improve the office space of the staff. Any change in the allocation of space in accordance with the above language will involve the Union in terms of the impact and implementation.

Section 3

When justified by Mission requirements, an effort will be made to equip each individual office space occupied by a Bargaining Unit Employee with a working telephone and a computer with a LAN port. Use of all equipment will be in accordance with Agency policies and procedures. Should staffing concerns render the above requirement unattainable, the Parties will work to resolve the impact and implementation of new arrangements that might be necessary.

**ARTICLE XIV
UNION USE OF FACILITIES AND BULLETIN BOARD**

Section 1

The Station shall provide the Union with office space in the temperature-controlled area of the Laboratory Complex. This office shall have a four (4)-drawer locking file cabinet, working telephone, telephone line, and computer with a LAN port that can connect to the Station network.

Section 2

A representative of the Union will become a member of the Space Committee at AFRS for the purpose of contributing to the impact and implementation of space allocations.

Section 3

Management agrees that an individual may transact non-representational Union business before or after duty hours or during lunch periods. The Union agrees that such activities will take place only in the Union office or conference room as scheduled and available.

Section 4

Management agrees to allow the Union reasonable use of the copier, fax machine, printers, telephone system, internet access, and public address system for official Union business.

Section 5

Management will provide the Union with reasonable space on an Official Bulletin Board for the posting of Union information.

ARTICLE XV SAFETY AND HEALTH

Section 1

Consistent with applicable law, Executive Order 12196, Occupational Safety, Health Act (OSHA) requirements, as well as other applicable health and safety codes, the Employer will support the maintenance of safe and healthy working conditions for all employees. If an appropriate authority determines there is a significant health or safety problem, the Employer, to the extent of its authority, will provide an appropriate remedy to address the needs of employees. The Employer and the Union will cooperate to that end and will encourage employees to work in a safe manner.

Pursuant to applicable law and regulation, no employee shall be subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthy working condition, or other participation in Station occupational safety and health program activities, or because of the exercise by such employee on their own behalf or another's behalf of any right afforded by Section 19 of the Occupational Safety and Health Act, Executive Order 12196, or 29 CFR 1960. These rights include among others, the right of an employee to decline to perform their assigned task because of a reasonable belief that under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting.

Section 2

The Union will be authorized to have one (1) member representative on the AFRS Safety Committee mandated by the AFRS Safety Program.

Section 3

The Union shall encourage all Bargaining Unit Employees to work safely with due consideration for the safety, health, and comfort of all fellow employees. To avoid preventable unhealthy or unsafe working conditions, the Union shall encourage respect and care by Bargaining Unit Employees for the Employer's facilities and equipment and their own work/break environment.

Section 4

Each Bargaining Unit Employee is encouraged to report any unsafe or unhealthy working conditions to his/her immediate supervisor as soon as any such conditions come to his/her attention.

The Employer will investigate the reported condition as soon as is practicable. To the extent possible, the Union will be given an opportunity to accompany any inspector as an observer who responds on such a complaint during the inspector's physical inspection of the workplace unless it would be hazardous to accompany the inspector. The Union representative will be granted official time for this purpose.

The Employer will investigate the reported condition as soon as is practicable. The Employer will ensure a timely response to an employee report of hazardous conditions. No employee will be unreasonably required to work in a situation determined to pose the threat of an imminent danger or significant health hazard as determined by the appropriate Safety Officers.

If an employee is assigned duties which he/she reasonably believes could possibly endanger his/her health or well-being, the employee will immediately notify his/her immediate or second-line supervisor of the situation. If the supervisor cannot solve the problem and agrees with the employee, the supervisor will, under normal circumstances, delay the assignment and refer the matter through the proper channels for appropriate action. When the supervisor does not agree with the employee's concerns, the employee has the right to seek effective redress through a normal hazard report by consulting the Union and/or filing a grievance under the negotiated grievance procedures.

Section 5

Employees who become injured or occupationally ill in the performance of duties shall report the injury or illness to their supervisor as soon as possible. The supervisor will refer the employee to the location Administrative Office which will advise the employee where and how to obtain treatment and their rights under the Federal Employees' Compensation Act. The Employer and employee shall cooperate in promptly processing all paperwork in connection with compensation claims.

Section 6

Each building in which Bargaining Unit Employees are stationed will have an Occupant Emergency Plan. The Employer will issue an annual reminder of the Occupant Emergency Program Plan.

Section 7

The Employer will provide first-aid kits at all building locations.

The Employer may provide for training to interested employees for Cardio-Pulmonary Resuscitation (CPR) during duty or non-duty hours. If training is taken during duty hours, official time may be authorized to those approved in advance for participation.

Section 8

The Employer currently participates in the ARS Occupational Medical Surveillance Program administered by Federal Occupational Health, a Division of the U.S. Public Health Service in accordance with REE, P&P, 235.0, ARS Occupational Medical Surveillance Program.

Section 9

The Employer agrees:

- a. to provide information available through the Department about ergonomic hazards and how to prevent ergonomic injuries if requested;
- b. to provide, to the extent possible, safety devices, such as antiglare screens and wrist props, which will promote greater safety and comfort for computer operators;
- c. to obtain and provide to the Union copies of applicable regulations if requested;
- d. to make available for review by the Union all safety reports generated by or required by law, regulation, and/or this Agreement if requested;
- e. to assure the provision of safe, potable drinking water to all Unit employees within ready access of working areas,
- f. that during extreme weather conditions, excessive heat or extreme subfreezing temperatures, employees are allowed to take appropriate rest periods to gain relief from the extreme weather conditions. Work leaders and employees are encouraged to discuss extreme weather conditions and work assignments in regards to employee safety and health when these conditions exist;

- g. that Management will consider closing the Station and granting Administrative Leave if working conditions in the main laboratory building are unacceptable in terms of temperature, humidity, and/or availability of power and potable water and these conditions cannot be corrected in a reasonable period of time.

**ARTICLE XVI
PERSONAL PROTECTIVE EQUIPMENT / CLOTHING**

Section 1

Members of the Bargaining Unit shall groom and attire themselves properly in a neat and clean manner which will not erode public confidence in the professionalism of the AFRS work force.

Abbreviated attire including but not limited to halter tops, muscle shirts, bathing suit tops, and "short" shorts will not be permitted at the Station. T-shirts and shorts and/or similar clothing will be allowed to be worn in the event an employee is working in an area where hazardous conditions do not exist and the area is not easily seen by the public; and the temperature that they must work in is excessively hot. No items shall be worn that have sayings and/or illustrations that can be considered as discriminatory, derogatory, or profane to AFRS, and/or Management, the general public, or are political in nature.

Section 2

The display and wearing of Union insignias, such as pins, pocket penholders, or tie tacks shall be permitted. Apparel shall not be considered inappropriate because it displays the Union logo or insignia, provided the insignia does not cover their ID name or the Unit's designation. No items shall be worn that present a negative tone or impact on AFRS and/or Management or which include political content.

Section 3

Safety equipment needed to protect employees shall be furnished and replaced, when necessary, by Management.

All equipment issued will provide protection to employees subjected to conditions for which an OSHA standard exists or is required by regulation. All safety equipment shall be certified or approved to provide protection from hazard at the approved level of safety.

Section 4

Employees shall be required to use all safety equipment issued for these purposes.

Section 5

The Employer shall pay expenses for equipment and clothing connected with providing required safety equipment.

Reasonable accommodation will be considered for individuals with disabilities who are required to wear and use personal protective equipment.

Section 6

Safety shoes shall be supplied not more than once every two (2) years to employees who require safety shoes in the performance of their duties as recommended by the Station Safety Committee and approved by Management.

Employees shall select safety shoes from those designated by the Station Management/Safety Committee. They must meet Federal procurement regulations and meet the safety requirements encountered during the performance of their duties. If shoes are destroyed as a result of official duties, replacements shall be provided.

Section 7

Prescription safety eye glasses shall be supplied by the Station on an as-needed basis, not more than once every two (2) years. It shall be the sole responsibility of the employee to pay for his/her eye examination. If glasses are broken or destroyed as a result of official duties, replacement shall be provided.

Section 8

The Employer shall provide adequate disposable outer wear for spraying pesticides and handling chemicals, proper equipment and wash areas for employees at no cost to the employee.

Section 9

Management and the Union agree that providing safety equipment is beneficial to Bargaining Unit Employees. The Parties agree that employees are responsible for wearing all items provided for by this article. Employees shall follow established procedures for having equipment turned in for maintenance and/or cleaning.

**ARTICLE XVII
HAZARDOUS WEATHER**

Section 1

Announcement of a delayed opening or closure due to extreme weather conditions will be included in the greeting of the Station's voice mail system by 6:00 a.m. Dial the Station's

number (304-725-3451) and press "0" to "speak to an Operator". This will allow you to hear the recorded alternate message. You will hear the standard Station greeting when you first dial the Station, and then you must Dial "0" to hear any announcement of a delayed opening or closure. It is the employee's responsibility to listen to the announcement in its entirety.

Section 2

In general, ARS policy has not changed in that "all employees are to presume, unless otherwise officially notified, that their work activity will be open each regular work day, regardless of any weather conditions which may develop. Employees are normally expected to cope with these difficult driving conditions or disruptions of public transportation facilities and arrive at work on time." There may be situations when a decision will be made to delay opening or to close the Station with the employees being informed through the voicemail message system. If weather deteriorates during the workday, employees will be notified by telephone or intercom of early dismissal.

In the recorded message, it may state, "the unscheduled leave policy is in effect for AFRS employees." This was formerly referred to as liberal leave policy. Employees who are not designated emergency employees may choose to take unscheduled leave for the entire day without prior approval, but should notify their supervisors of this decision.

Section 3

REE, P&P, 402.6, Leave (REE), states the overall policies and procedures for emergency dismissal or closure. There are several situations; delayed opening, complete Station closure, early dismissal, and unscheduled leave policy. Each situation is handled differently.

- a. **Delayed Opening**: When the Station is under a delayed opening, those hours are considered nonwork hours and no employee will be charged leave for those hours. The amount of administrative leave that an employee receives during a delayed opening is dependent on his/her master schedule. If, after hearing of a delayed opening, an employee chooses to stay home for the day, he/she will be charged leave from the time the Station opened until the end of his/her scheduled workday.
- b. **Station Closure**: Every employee receives administrative leave for the total number of hours he/she was scheduled to work that day. If an employee is on prior approved leave and the Station is closed for the entire day, that employee is also excused without charge to leave.

- c. **Early Dismissal**: If an employee is on duty at the time of the early dismissal he/she will not be charged annual leave, but will be granted excused absence. The excused absence will cover the remainder of the workday and will still apply even if the employee had originally planned to take annual or sick leave later in the day. If, however, an employee leaves work BEFORE receiving word of the impending group dismissal or adjusted work dismissal, appropriate and available leave will be charged for the remainder of the day. If an employee leaves AFTER receiving word of an impending dismissal but before the time set for dismissal, they will be charged leave from the time of actual departure until the time that the official dismissal goes into effect.
- d. **Unscheduled Leave Policy**: When the announcement says only that there is "unscheduled leave policy in effect" it means that the Station is open for business but employees may elect to take personal leave (annual leave, comp leave, credit leave) without prior approval of their supervisor. They are obliged, however, to notify their supervisor of their unscheduled leave.

Section 4

The following scenarios are offered for the employees understanding:

- a. A delayed opening has been announced for 10 a.m. You would receive administrative leave from the time you normally report to work (per your master schedule) until the opening time of 10 a.m.
- b. A delayed opening has been announced for the Station for 10 a.m. and you decide to remain at home rather than risk traveling. You are entitled to the administrative leave (up to 10 a.m.) with the remaining hours of your workday being charged to personal leave (annual leave, credit leave, comp leave).
- c. When an announcement is made to close the Station early, the actual time between the closing and the end of your workday according to your master schedule will be charged to administrative leave.
- d. If an employee has elected to stay home on a day that had been announced as "delayed opening", and the Station later has "early dismissal" he/she will be charged personal leave for the entire "workday" (that is, the hours from the time the Station opens until the end of that employee's work schedule). No administrative leave will be given for the early dismissal to an employee who is on leave. They will be charged personal leave from the time that the Station opened until the end of their scheduled workday.

Section 5

A copy of the Station's Hazardous Weather Plan will be distributed in its entirety to each employee annually.

ARTICLE XVIII
HOURS OF DUTY / FLEXIBLE WORK SCHEDULES

Section 1

REE, P&P, 402.1, Flexible Work Schedules (REE), will serve as an overall guide.

Section 2

Standard tours of duty at the AFRS shall be the established normal hours of operation from 8:00 a.m. to 4:30 p.m., Monday through Friday, with a scheduled half-hour for lunch. Employees must have a lunch break for every seven (7) hours worked. Employees that are required to work in excess of 40 hours per week will be compensated by either overtime or compensatory time.

Section 3

The ARS Form 331, Schedule, will be used to establish a work schedule. All alternative work schedules will require the concurrence and approval of the employee's supervisor in advance of work schedule changes. This will be at the minimum of one pay period in advance. All individual choices will be considered. However, supervisors must ensure adequate coverage to meet mission and customer needs. Therefore, all employees may not be accommodated in the same manner.

Section 4

Employees should be aware that certain conditions may cause their approved work schedules to be changed by their supervisor. Some of these conditions are:

- a. Station or mission requirements
- b. Leave-sick, annual, etc.
- c. Training
- d. Contractor support-weekends, evenings, scheduled outages, etc.

Section 5

Deviation from an approved tour-of-duty must have supervisory concurrence and approval.

Section 6

Requests for changes to tours-of-duty to increase time off during holiday periods will be reviewed on a case-by-case basis, and approved or disapproved, at the discretion of the supervisor. Decisions will be based on workloads and staffing needs.

Section 7

Employees attending training of more than eight (8) hours will revert back to a standard tour-of-duty within that pay period.

Section 8

Bargaining Unit Employees will be allowed one (1) fifteen-minute break period during each assigned four (4) hours of duty, whenever practical. Breaks encompass the time period from the time the employee leaves and returns to the worksite. Both Parties acknowledge that breaks are considered work time and as such cannot be combined or used in conjunction with lunch time or departure time. The Union recognizes that Management may have a need and will exercise the right to assign work during breaks according to the demands of the mission requirements and 5 USC 7106(a)(2)(B).

If an employee cannot take a break because of the workload, the break time may not be added as a continuation of the lunch period and shall not be accumulated or used immediately prior to the end of the tour of duty. Management recognizes that the situations when an employee will not be able to take a break because of the workload, will be rare.

Section 9

Clean-up time shall include the time necessary for putting away tools, cleaning-up, and all necessary transportation from the worksite. Supervisors shall be responsible for determining the need for and duration of adequate clean-up time before lunch and at the end of the workday.

Section 10

Both Parties recognize the importance of recording research data and maintaining laboratory notebooks for accomplishing the mission of the Station. Both Parties recognize that good laboratory practices need to be followed.

Section 11

Normally the earning of credit time must be approved in advance by the employee's supervisor or designee. However, under unusual circumstances and with a working agreement between the supervisor and the Bargaining Unit Employee, credit time may be earned up to 1 hour without prior approval.

Section 12

Employees will be credited eight (8) hours of holiday leave (excused absence) on an official 8-hour holiday. Anyone on a 5/4/9 or 4/10 schedule shall adjust their work schedule to use annual leave, compensatory time, or credit hours to compensate for the additional time in excess of 8 hours on a designated holiday. With supervisory approval, schedules may be changed in advance of a holiday to allow the employee to schedule the holiday leave as one (1) of their eight (8) hour days. The day off for a holiday would then be an eight (8) hour day, instead of an in-lieu-of day.

Section 13

Bargaining Unit Employees requested to work by their supervisor on weekends/holidays in non-emergency situations such as plant, field, or building facility maintenance will be given the option of credit time or compensatory time/overtime at the employee's discretion and shall have a minimum of two (2) hours awarded for each visit required in accordance with REE, P&P, 402.3, Premium Pay.

Section 14

Security systems are not intended to be used as a time and attendance system. However, cases may arise where the security systems are used to document/validate misconduct or security issues.

**ARTICLE XIX
LEAVE**

Section 1

Supervisors will respond in writing within a reasonable period of time as far in advance as is practicable to written requests from employees [Office of Personnel Management (OPM) Form 71] for the use of annual leave. Supervisors will give consideration to employees' plans and desires before canceling or rescheduling annual leave that has been approved in writing. However, it is Management's right to cancel or reschedule leave based on unforeseen mission requirements.

Section 2

Employees shall submit their leave request in writing, as far in advance as possible, using OPM 71.

Section 3

If, after reporting for duty, an employee is informed of an emergency personal situation and desires leave, supervisors will make every reasonable effort to grant a leave request consistent with mission requirements.

Section 4

When an employee is unable to contact his/her supervisor to request leave, he/she shall contact his/her second-level supervisor. The pre-submission of leave slips will not be a requirement for approval of annual leave in the event of a death in the immediate family (such as father, mother, spouse, and children).

Section 5

Administratively acceptable evidence to support sick leave absences of three (3) consecutive workdays or less will normally be the employee's written statement (OPM 71). However, the Management may still require an employee to provide medical documentation that is administratively acceptable in accordance with the provisions of 5 CFR 630.

Sick leave absences of more than three (3) consecutive workdays must be supported by a physician's statement attached to an OPM 71.

Supervisors will counsel employees after establishing that the employee is not properly using sick leave, prior to formal action being taken. The supervisor shall advise the employee in writing that he/she is required to support all future use of sick leave by a physician's statement and that his/her own written statement (OPM 71) shall not be considered administratively acceptable evidence. The requirement that employees support all use of sick leave by a physician's statement will normally not exceed six months, if the employee's absences due to illness have been satisfactorily supported to the supervisor.

Section 6

Leave may be granted in fifteen (15) minute increments.

Section 7

Administrative leave may be granted, in accordance with the provisions of REE, P&P 402.6, Leave, for employees who participate in the sponsored blood drive with the supervisor's approval.

Section 8

Requests for leave of less than one day do not require an OPM 71. Per Agency policy, when an OPM 71 is not required, the supervisor's signature on the time and attendance sheet serves as approval.

Section 9

Requests for sick leave for medical appointments must be made as much in advance as possible. Requests for sick leave due to illness or injury are to be made to the employee's supervisor or designee, no later than one (1) hour after reporting time.

Section 10

Employees are expected to call their supervisors within the same time constraints on each succeeding day the illness persists. In cases of extended illness, employees may make prior arrangements with their supervisor to call other than on a daily basis to keep supervisors aware of their health status.

Section 11

Annual leave or leave-without-pay may be granted on the day of the request after:

- a. a determination is made that an employee actually has an emergency; and/or
- b. the supervisor determines the absence from duty will not adversely affect the Unit's ability to accomplish the tasks assigned for that day.

Section 12

Unscheduled annual leave, sick leave, or leave without pay will not be granted simply because it is inconvenient for an employee to work that day.

Section 13

Employees who intend to use leave under the provisions of Family Medical Leave Act (FMLA) must provide notice of intent as soon as practical, as determined by the employee's supervisor. The Station may require medical certification(s) for leave to care for a family member with a serious health condition or the employee's serious health condition that prevents the employee from performing essential duties.

Section 14

Except in unusual circumstances, employees (not wife/husband, friend, brother, sister, etc.) are expected to make their own leave requests to their immediate supervisor. Only persons in the employee's supervisory chain of command (not secretaries, timekeepers, coworkers, etc.) are authorized to approve leave requests.

Section 15

When employees are unable to contact the immediate supervisor, they must leave a message indicating where the supervisor may reach them to grant approval of requested leave or in the absence of the supervisor ask for the next higher supervisor.

Section 16

If an employee has questions or needs further information regarding the leave policy or needs a copy of the REE, P&P 402.6, Leave, he/she may contact his/her supervisor, AFRS Administrative Office, or the REE Administrative Issuances System of the ARS-Administrative and Financial Management Website at <http://www.afm.ars.usda.gov/ppweb/>.

Section 17

LEAVE CATEGORIES

- a. Annual Leave is a benefit which permits employees to be absent from duty for personal reasons without pay loss. The scheduling of annual leave is subject to supervisory approval.
- b. Sick Leave is an entitlement which permits employees to be absent from duty when incapacitated for duty because of sickness or injury, for medical, dental or optical examination or treatment.
- c. Leave Without Pay (LWOP) is an approved absence from duty in a non-pay status that has been requested by an employee in advance. It is not granted automatically because an employee has used all available sick leave or annual leave. It is not appropriate for unauthorized absences.
- d. Absence Without Official Leave (AWOL) is an absence from duty which was not authorized or approved. Employees who absence themselves from duty, without proper authorization, place themselves in an AWOL category, which is a non-pay status and may subject themselves to disciplinary action.
- e. Family Medical Leave Act (FMLA) is an entitlement for covered full-time employees who have completed one (1) year of service. Twelve (12) administrative workweeks (480 hours) of leave without-pay may be used during a twelve (12) month period for specific reasons, as outlined in REE, P&P, 402.6, Leave. For part-time employees, the amount is prorated.
- f. Sick Leave for Family Care can be used to care for a family member or someone of whose close affinity with the employee is equivalent of a family relationship. Employees can use up to 104 hours of sick leave and under certain conditions, up to 480 hours of leave without pay in a leave year as outlined in REE, P&P 402.6, Leave.
- g. Absence for Religious Observances is an approved absence from duty in which employees may use annual leave, credit hours, etc. to cover the absence, or employees may use compensatory time off. Compensatory time in such cases may be worked either before or after the time off is used. Supervisors should be as liberal and accommodating as mission requirements and fairness to other employees permit in adjusting employees' schedules to allow for religious observances.
- h. Advanced Sick Leave in the event of serious disability or illness, supervisors may grant a maximum of thirty (30) days advanced sick leave to permanent employees. Employees serving under a limited appointment may be granted advanced sick leave, not to exceed the amount of sick leave they will earn in the remaining period of employment. Advanced sick leave may not be authorized when it is known or reasonably expected that employees will not return to duty (e.g., employees have been approved for disability retirement or have submitted a resignation).

- i. *Sick leave* can be appropriately used by a disabled employee (who uses prosthetic devices, wheel chair, crutches, guide dog, or other similar type devices) for equipment repair or guide dog training or medical treatment.

ARTICLE XX OVERTIME / CALL BACKS

Section 1

The assignment of overtime is a function of Management. Assignments will be based on workload only and not used as a reward or penalty to employees. Overtime will be paid in accordance with applicable laws and regulations (REE, P&P 402.3, Leave).

Section 2

Assignments shall initially be made by seeking volunteers who are fully qualified to perform the work. If there are insufficient numbers of qualified volunteers, assignments will be made in a fair manner from individuals who have the qualifications and/or special skills to perform work.

Section 3

Management recognizes the importance of effective planning. Bargaining Unit Employees will be provided as much advanced notice as possible when overtime is being assigned. Bargaining Unit Employees designated to work overtime on a day outside the basic workweek will normally be notified no later than the start of the scheduled lunch period one (1) day before the assignment.

Section 4

Work and holiday schedules will be made as far in advance as possible. Assignments will be rotated among the qualified employees as fairly as possible.

Section 5

The parties hereby agree to the following with respect to the implementation of the initiative to reduce overtime within AFRS.

Managers and employees throughout the AFRS will work together in good faith, to jointly find an acceptable method to reach our common goal of reducing overtime.

Section 6

Management and the Union agree that the overall welfare of employees is important. They also agree that in emergency situations, employees must be called back to work to perform duties that will prevent the loss of property and/or research. To provide as much flexibility as possible, some employees may be provided with pagers and/or other communication devices so that they may respond as necessary, but some others will be contacted over their private phones.

Whenever an employee is required to return to work outside their normal tour-of-duty, he/she will be compensated in accordance with established policies and procedures contained in REE, P&P 402.3, Premium Pay.

Section 7

AFRS will seek input from those employees who may be called back, to develop a system to ensure fair and equitable distribution of overtime pay. A volunteer system will be the preferred method for overtime rotation. However, if there are insufficient volunteers, a rotation system or management assignment of work will be used. Employees may request not to be considered for call back overtime if they can identify a replacement willing to work in their place. Final assignment of the overtime will be made at the discretion of the supervisor. Any replacement considered, must be qualified to perform the required tasks as determined by the Management.

ARTICLE XXI PAY AND ENVIRONMENTAL DIFFERENTIAL

The Agency agrees to apply and abide by law, rule, and regulation that is consistent and applicable to hazardous duty pay in the civilian Federal sector.

ARTICLE XXII HOLIDAYS

Section 1

Legally declared Federal holidays are applicable to Bargaining Unit Employees.

Section 2

When operational requirements permit, employees normally required to work on actual established legal holidays, or days observed in lieu of such holidays, may be given such days off if requested by the employee in advance and approved by his/her supervisor. For full-time employees a holiday consists of eight (8) hours.

Section 3

Essential employees required to work on legal government holidays or Federal Government closures will be required to report for duty.

Section 4

The list of holidays is in accordance with 5 USC, Section 6103, Holidays.

**ARTICLE XXIII
POSITION CLASSIFICATION**

Section 1

The Station and the Union agree that the principle of equal pay for substantially equal work will be applied to all position classification actions.

Section 2

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

When an employee believes that there is a question concerning the proper classification of his/her position, the employee may discuss the situation with his/her manager. If the manager cannot resolve the employee's concerns to the employee's satisfaction, the employee may request that the manager arrange for a review by Human Resources Division (HRD) to provide further information to the employee.

When an audit is required, the Union will be notified in advance. The audit will normally take place within thirty (30) work days. If such an audit is conducted, the employee will be afforded an opportunity to discuss the results and analysis of the audit with his/her manager and, if necessary, with HRD. Upon request, a copy of the audit report will be given to the employee.

An employee may file a statutory classification appeal of his/her position in accordance with REE, P&P, 431.1, Position Classification and Position Management. Management will provide procedural information to employees filing appeals.

Section 4

Changes in grade level based on reclassification will be effective on the first pay period following final approval of the action.

Section 5

The Agency will ensure that all positions are properly classified. Should periodic reviews be utilized, the Union will be notified in advance.

**ARTICLE XXIV
PERFORMANCE APPRAISAL**

Employees in the Bargaining Unit will be evaluated on an annual basis under the current ARS Performance Appraisal System. Each employee will be informed of the performance standards

and critical elements of the employee's position. Performance standards and critical elements shall be in accordance with EEO guidelines and Office of Personnel Management (OPM) prescribed directives. Performance standards will be applied in a fair and equitable manner. The Parties acknowledge that Agency REE, P&P, 418.3, Performance Appraisal System (ARS), dated May 21, 1992, establishes the ARS Performance Appraisal System. All provisions of the directive apply to the Bargaining Unit.

Supporting Information:

In no case may the decision to take action be based on matters not stated in the proposed notice. Any action to reduce in grade or remove an employee for unacceptable performance under 5 CFR 432, must be supported by substantial evidence.

Section 1

Performance appraisal is a continuous process. It is an integral part of a sound employee/supervisor relationship, involving communication between employee and supervisor concerning requirements of job expectations, performance necessary to achieve them and progress in terms of meeting stated objectives. Communication shall include ongoing feedback to the employee about the level and quality of performance. Performance appraisal and/or counseling is a joint process designed to increase constructive communication between the supervisor and employee, and to improve the employee's performance.

Performance plans including elements and standards shall be based on the requirements of the position.

Section 2 - Definitions

A critical element is a component of an employee's job that is of sufficient importance that performance below the fully successful level would result in an unacceptable performance in the employee's position.

A non-critical element is a component of an employee's job that is of such importance as to require measurement but which is not critical.

Performance standard is the expressed measure of a level of achievement for an element.

A performance plan is the aggregation of all of an employee's written critical and noncritical elements and performance standards.

An appraisal is the act or process of reviewing and evaluating the performance of an employee against the described performance standards on an AD Form 435, Performance Appraisal.

Appraisal rating period is an annual period in which performance is assessed.

Mid-Year review is a review of the employee's progress toward achieving the performance standards which is not considered a rating of record.

Performance Improvement Plan (PIP) is a written notice informing an employee of performance deficiencies and of the action(s) to be taken by the employee to improve performance.

Summary rating is a consolidated score of the individual performance rating for each critical and non-critical element.

Annual rating/rating of record is a written record of the overall performance rating which reflects the summary rating. Annual ratings are pre-scheduled ratings of record and are generally conducted once a year.

Section 3

Pursuant to 5 USC 4302, performance standards must, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the position in question. Performance standards will be written in a common format.

Performance standards are expressed measures that Management expects to be achieved for each position element. The standards for all elements shall be defined at the fully successful level. The standards shall be specific, observable, and measurable descriptions in terms of quantity, quality, timeliness, and manner of performance.

When developing performance plans, the Management/supervisor will encourage the input of employees who occupy such positions before implementing such performance plans. Performance plans shall be established and communicated to the employee in writing within the time frame established by the Area Office and the AFRS Management. At the time the plan is provided to the employee, the supervisor and employee will discuss the plan and its elements in an attempt to avoid any subsequent misunderstandings about the expected performance.

An employee may request that his/her standards or elements be reconsidered in light of his/her comments, or if the employee's duties have been sufficiently changed. However, the approval of the performance plan rests with the rating and reviewing official.

Employees permanently assigned to new positions, or work Units with different elements and standards, will be issued a performance plan no later than thirty (30) days of entering the new position.

Section 4

There will be three (3) levels for assessing each element. Each element will be rated either "exceeds fully successful," "meets fully successful," or "does not meet fully successful". Each element will be rated using one of these levels and must be based on employee performance.

When the summary rating is superior or fully successful on Form AD-435, Performance Appraisal, the write-up in the accomplishments block for each element is optional.

Elements rated "does not meet fully successful" and summary rating of "marginal" or "outstanding" must be supported with narrative documentation and may include other evidence. Employees will submit a statement of their accomplishments. The employee's statement of accomplishments will be included with the appraisal package. The minimum period upon which a rating should be based is ninety (90) calendar days of continuous service in a permanent position under the same performance standards. However, if at the end of the rating period, a Bargaining Unit Employee has not served ninety (90) days in the same position, under the same performance standards and elements, the appraisal may be deferred until these conditions are met.

An employee's summary performance rating shall be one of the following five levels:

- a. Unacceptable
- b. Marginal
- c. Fully Successful
- d. Superior
- e. Outstanding

Official time spent performing Union representational functions will not be considered when evaluating performance.

Section 5

Bargaining Unit Employees will be given a completed appraisal within the time frame established by the Area Office and the AFRS Management. Employees will submit a list of accomplishments within ten (10) calendar days after completion of the rating period.

When a performance rating is presented to an employee, the discussion will include the basis for the rating and the employee will be shown all written material used in the evaluation process. The employee will be asked to sign the original rating form. His/her signature does not mean the employee agrees with the rating. If the employee refuses to sign, this fact will be recorded on the form by the appraising official.

Section 6

Informal discussions, including review of performance to determine progress and problems are a normal part of supervision and should occur throughout the appraisal period.

Progress reviews provide the opportunity to identify and resolve problems in the employee's performance.

- a. A progress review will be conducted whenever the employee reaches the approximate midpoint between the date the employee's performance plan was issued and the end of the appraisal period, unless the length of this period is less than ninety (90) days.
- b. Additional progress reviews may be conducted.
- c. Progress reviews will summarize the employee's performance in comparison to each critical and non-critical element of the performance plan. Remedial actions may be identified, as appropriate.
- d. The employee will be asked to initial and date the progress review as well as a summary of his/her mid-year evaluation as prepared by a supervisor.
- e. Progress reviews under this Section are confidential discussions between the employee and immediate supervisor, and therefore do not constitute formal discussion under 5 USC 7114(a)(2)A.

ARTICLE XXV ACCEPTABLE LEVEL OF COMPETENCE

Section 1

Employee's performance of duties and responsibilities of the assigned position must be at an acceptable level of competence. To be at an acceptable level of competence, the employee's most recent rating of record must be Fully Successful or better.

If the employee is performing at the fully successful level or above and has not received an equivalent increase during the waiting period, the Employer shall grant, whenever applicable, a Within-Grade-Increase (WGI) to the employee in the first pay period following completion of the required waiting period.

Section 2

When a manager concludes that an employee's performance does not meet the fully successful level and the employee has not received an equivalent increase during the waiting period, the employee will be notified in writing, at least (5) calendar days in advance of the effective date of the WGI being denied. The notification will identify the standard(s) that the employee has failed to meet at the fully successful level of performance and what the employee needs to do to bring his or her performance to the fully successful level. The notice will advise the employee of his or her reconsideration rights.

Section 3

An employee may request reconsideration of a negative level of competency determination by filing, not more than fifteen (15) calendar days after receiving the negative determination, a written response setting forth the reasons that Management should reconsider the determination. Requests for reconsideration shall be filed with the employee's second level supervisor.

Neither the substantive nor procedural aspects of WGI denials may be grieved until a reconsideration decision is due or issued, whichever is earlier. A reconsideration decision is due twenty (20) calendar days from the date of the Employer's receipt of the employee's written request. Reconsideration that finds an employee should have been granted a WGI, the WGI will be processed with the original effective date.

ARTICLE XXVI UNACCEPTABLE PERFORMANCE

Section 1

An action based on unacceptable performance is defined as the removal, reduction in grade, or reassignment of an employee whose performance is at the unacceptable level in one or more critical elements of the performance standards established for his or her position.

This Article applies only to employees who have completed their probationary or trial period. It does not apply to employees serving on a temporary appointment.

Section 2

Because the performance appraisal is a continuous process, at any time after performance standards have been in place for a minimum period of 90 calendar days, the following procedures will be followed consistent with Chapter 43, 5 USC, if the Employer concludes that a Bargaining Unit Employee's performance on any critical element is unacceptable;

- a. There must be a discussion between the Employer and the Bargaining Unit Employee for the purpose of:
 - (1) advising the Bargaining Unit Employee of specific deficiencies between observed performance in the performance element(s) under scrutiny and the performance standard(s) associated with the particular element(s);
 - (2) providing the Bargaining Unit Employee with a full opportunity to explain the observed deficiencies; and,
 - (3) advising the employee of opportunities to attend counseling and training.
 - (4) employees have the right, if they choose, to file a grievance/complaint on any formal performance appraisal issued by the supervisor and to seek Union representation.

b. After the discussion, the Employer should determine what action is best suited to the particular circumstances. Unacceptable performance may lead to reassignment, reduction in grade, or removal.

c. Performance Improvement Period:

(1) Prior to initiating an action to involuntarily remove or downgrade an employee, the employee must be given a written notice of unacceptable performance in one or more critical elements of his or her performance standards and placed on a PIP for a specific period of time (30 to 180 days as determined by Management and consistent with law, rule or regulation) to provide the employee a reasonable opportunity to improve to the fully successful performance level.

This notice will include:

(a) specific information on the length of the PIP and how the supervisor will assist the employee in that effort;

(b) specific information as to what the employee must do to bring performance to the fully successful performance level during that period; and

(c) a statement that effort will be made to evaluate the employee's performance on a biweekly or monthly basis during the PIP.

(2) During the PIP, the employee will be given the opportunity to work on those portions of the job that were performed at a less than fully successful level, but not to the exclusion of other work assignments. The supervisor will ensure that the employee receives adequate work time in order to improve performance that does not meet the fully successful level. Parties agree that the employee is responsible for satisfactorily completing all elements, not just the deficiencies, during the PIP.

(3) Normally within twenty (20) calendar days after the completion of the PIP, the employee will be notified in writing whether the employee's performance meets or does not meet the fully successful level.

(4) If the employee's performance is determined to be not fully successful, the Employer may reassign the employee upon written notice that includes a statement of grievance rights, propose to remove, or demote the employee.

d. Notice of Performance-Based Action in accordance with 5 CFR 432.

An employee whose reduction in grade or removal is proposed is entitled to at least thirty (30) days advance written notice which informs the employee:

(1) of the nature of the proposed action;

- (2) of the critical element(s) of the employee's position involved in each instance of unacceptable performance;
- (3) of the specific instance(s) which demonstrates unacceptable performance by the employee on which the proposed action is based;
- (4) of their right and the time limits to reply both orally and/or in writing to the proposed action and to whom;
- (5) of their right to be represented by the Union or other representative.

Section 3

The employee will be given the opportunity to respond orally and/or in writing prior to a decision being rendered on the proposed action.

If the employee elects to make an oral reply, the Employer will make a copy of the oral report and will provide a copy to the employee.

Section 4

If, after full consideration of the case a performance based action is warranted, the Employer will decide whether to remove or demote the employee.

The deciding official shall prepare a decision letter, which shall include all of the following:

- a. Findings with response to each reason and specification listed in the letter proposing the action.
- b. Findings with response to each factual dispute, if any, raised by the employee's reply;
- c. The effective date of the action. The effective date must be no earlier than thirty (30) calendar days after the date on which the employee received the proposal notice.
- d. Written concurrence in the action by an ARS official who is in a higher pay position (if one exists) than the official who proposed the action;
- e. Notice to the employee that he/she has the option to appeal the action to the Merit Systems Protection Board (MSPB) or through the negotiated grievance procedure, but not both; and,
- f. Notice to the employee that he/she will be deemed to have exercised his/her option to raise the matter under one procedure or the other at the time the employee files a timely written grievance or files a notice of appeal under the applicable MSPB procedure.

Section 5

If the employee is the subject of an action based on unacceptable performance related to a disability, and the employee is eligible and files for disability retirement, and the Employer recommends approval, the Employer will delay the action to allow a determination to be made concerning the disability retirement.

Section 6

Any of the limits set forth in this Article may be extended or waived by mutual agreement in writing by both parties consistent with 5 CFR 432.

ARTICLE XXVII AWARDS

Section 1

The use of monetary and non-monetary awards has been proven to have a significant effect on employee morale, motivation, and performance. Award programs provide recognition based on employee performance, improvement, contributions, and achievements that contribute to the Station's mission. An effective awards program is intended to reward and motivate employees to continually strive for excellence.

Section 2

All Parties agree to comply with the "USDA Guide for Employee Recognition," any other fact sheets or policy and procedures issued by HRD and any policy issued by the Area Office or AFRS, in administering an awards' program for Bargaining Unit Employees. A copy of this guide, fact sheet or policy and procedure may be obtained from the AFRS Administrative Office. The AFRS will fairly recognize and reward individuals and groups for excellence in service to the mission of the organization.

Section 3

Bargaining Unit Employees are eligible for most types of recognition as noted in Section 4.

Section 4

Non-monetary awards are given for a specific outstanding accomplishment, such as a superior contribution on a project or assignment, a technical achievement, an act of heroism or a cost savings. Non-monetary awards may consist of letters of appreciation, certificates, time off and/or keepsake items.

Monetary awards are given for performance over the course of a rating cycle (performance awards) such as consistent high productivity or high quality of work, or for a particular accomplishment, such as those described above under non-monetary awards.

- a. Performance Awards - All ratable Bargaining Unit Employees are eligible for performance awards. These awards are given at the end of the performance cycle and Bargaining Unit Employees may only receive one a year. These awards and their amounts will be determined using the scales in the "USDA Guide for Employee Recognition," North Atlantic Area Office guidance, and local AFRS policies.
- b. Quality Step Increases (QSI's) - All ratable Bargaining Unit Employees who receive an Outstanding performance rating at the end of the performance rating cycle are eligible for QSI's, except for wage grade employees. Only one QSI may be awarded to a Bargaining Unit Employee within a 52-week period.
- c. Extra Effort Awards - All Bargaining Unit Employees are eligible for extra effort awards. These awards may be presented individually or to groups. These awards may be given at any time and there is no limit to the number of extra effort awards a Bargaining Unit Employee may receive.
- d. Spot Awards - All Bargaining Unit Employees are eligible for spot awards. These awards may be presented individually or to groups.

ARTICLE XXVIII MERIT PROMOTION

Section 1

The principle of merit promotion is to ensure that employees are given full and fair consideration for advancement and to ensure selection from among the best-qualified candidates. Management recognizes the value of promoting from within the Agency.

Positions in the Bargaining Unit will be filled on the basis of merit and in accordance with applicable law, rule, regulations, and this Agreement.

REE, P&P, 420.1, Merit Promotion, states employees may submit a "voluntary application" to HRD for vacancies, which occur while they are out of the office.

Section 2

All vacancy announcements will contain the following information:

- a. announcement number and issue date;
- b. area of consideration;
- c. title, series, grade, and number of positions;

- d. geographic location of position;
- e. closing date for acceptance of applications;
- f. summary of the duties of the position;
- g. known promotion potential, if any;
- h. instructions for applying the name and phone number of the contact person for any information concerning the vacancy announcement, including a copy of the position description.
- i. whether reimbursement for relocation expenses is authorized in the event a selection is made of a candidate from outside the commuting area;
- j. a statement that the principles of EEO will be adhered to in all phases of the selection process.
- k. all other information required by law.

Section 3

Qualification requirements and Selective Placement Factors for vacant positions will be job related.

OPM Qualifications Standards Handbook will be used in rating a candidate's qualifications for a position.

Selective Placement Factors may be used in determining basic qualifications if they are essential (not merely desirable) to successful performance in the position being filled. The inclusion of such factors must be supported by the position description.

Section 4

The best qualified candidates will be identified through an impartial evaluation of eligible candidates based upon uniformly applied job-related evaluation criteria. The following factors will provide a framework for determining the qualifications of candidates.

- a. Experience as related to the knowledge, skills, and abilities required for the position.
- b. Training and Education. Pertinent education, training, self-development, and outside activities related to the position to be filled.
- c. Performance Appraisal. All current Federal employees must submit a copy of their most recent performance appraisal form.

d. Awards and Recognition.

Section 5

The evaluation of candidates for positions will be done according to the current Agency P&P's.

Based upon the review of applications, the evaluator(s) will determine the candidates who should be referred to the selecting official.

The best qualified or eligible applicants will be referred for each position and/or grade level.

The names of the best qualified applicants will be listed alphabetically for referral to the selecting official. Individual scores will not be listed.

Section 6

a. The selecting official will comply with all applicable laws, rules, regulations, and this Agreement. The selecting official must consider candidates for the position according to the following order of precedence:

- (1) Career Transition Assistance Program (CTAP) applicants who are well qualified,
- (2) Former Department employees who are on the Department's priority reemployment or repromotion list,
- (3) Best qualified applicants from all other sources, and
- (4) Priority consideration.

b. The selecting official is not required to fill a vacancy by selection of one of the best qualified and eligible candidates listed on the certificate of eligibles. He or she may:

- (1) request extension of the area of consideration;
- (2) request additional recruitment efforts;
- (3) fill the job by some other type of placement action; and/or
- (4) cancel the vacancy

c. Bargaining Unit Employees covered by this contract will be notified of their selection by HRD and will be released from their existing positions as agreed to by the supervisor of the selected employee and the hiring official.

Section 7

In accordance with 5 CFR 335, and to ensure individuals' rights to privacy are protected, HRD shall keep a copy of documents (if applicable) in each merit promotion file for a period of two (2) years, or after formal personnel management evaluation review by OPM, whichever comes first.

ARTICLE XXIX CAREER LADDER PROMOTIONS

Section 1

An employee in a career ladder may be promoted no earlier than the first full pay period after all of the following requirements are met:

- a. The employee becomes eligible to be promoted after one (1) year in a grade or whatever period satisfies basic eligibility requirements;
- b. The employee demonstrates the potential for satisfactory performance at the next higher level. In this regard, the supervisor will, whenever possible, make this determination prior to the date the employee is eligible to be promoted;
- c. The employee's current performance appraisal record must have an overall summary rating of "fully successful" or better; and
- d. All other requirements of law and regulation are met.

Section 2

Supervisors shall review the work of each employee in a career ladder position who will be eligible for a career ladder promotion prior to the employee's eligibility date. Employees who do not meet the requirements for promotion, in accordance with Section 1 of this article, may request from the supervisor an explanation for the reason the promotion did not occur. Management will explain the specific performance element area(s) where the employee is lacking and advise the employee as to what he/she must do to meet the requirements for promotion.

Section 3

Once an employee's performance improves to the required level as described in Section 1 of this article, the supervisor will reconsider recommending the employee for promotion.

**ARTICLE XXX
DETAILS AND TEMPORARY PROMOTIONS**

Section 1

A detail is the temporary assignment of an employee to a different position for a specified period of time.

Section 2

Supervisors have the right to detail employees to other work for reasons such as emergencies, absence of employees, urgency of work to be accomplished, and training. All such details will be made in consideration of organizational needs and no detail will be made to avoid the principles of merit promotion. Qualified and available employees, when practical, will serve on detail on an equitable basis.

Section 3

If a detail exceeds thirty (30) consecutive calendar days, the appropriate supervisor will initiate a Request for Personnel Action (SF-52) which will document the detail for submission to the Employee's Official Personnel Folder (OPF).

Section 4

When a detail exceeds five (5) consecutive workdays, the affected employee may request appropriate training and a copy of the position description to which he/she is detailed.

Section 5

When appropriate, temporary promotions to higher level positions may be utilized and selections will normally be made from eligible employees who express an interest. Employees must meet the qualifications for the temporary promotion.

**ARTICLE XXXI
DISCIPLINARY AND ADVERSE ACTIONS**

Section 1

A "suspension" is defined as the placement of an employee, for disciplinary reasons, in an involuntary non-pay, non-duty status.

A "disciplinary action" is defined as an official letter of reprimand, a suspension of fourteen (14) calendar days or less or alternative discipline.

A "letter of reprimand" is a written document describing inappropriate conduct or other deficiency giving rise to the reprimand, and provides official notice that a failure to correct the inappropriate conduct or deficiency, or future misconduct, or deficiency may result in more severe action.

An "adverse action" is defined as a suspension of more than fourteen (14) calendar days, involuntary reduction in grade or pay, or removal taken under 5 CFR 752.

Section 2

No Bargaining Unit Employee will be disciplined and/or subject to adverse actions, except for such cause as will promote the efficiency of the Service. The Employer agrees that any disciplinary and/or adverse action taken will be appropriate to the specific offense and in accordance with applicable law, rules, and government-wide regulations. In those instances where formal action is not taken, supervisors shall discuss with their employees unacceptable behavior which reflects negatively upon the Service and which could, if continued, constitute grounds for disciplinary and/or adverse actions. Disciplinary and/or adverse actions shall be consistent with the concept of progressive discipline, as appropriate. Bargaining Unit Employees have the right to Union representation in accordance with 5 USC 7114 (2)(B) (Weingarten).

Unless otherwise stated within this Article, disciplinary/adverse actions will be administered, as timely as possible.

When a disciplinary or adverse action is proposed, the employee, upon request, will be furnished with a copy of the material relied upon by the Employer to support the proposed action.

Employees may grieve those items in Section 1, in accordance with the terms of this contract. An original and duplicate of the letter of reprimand, notice of proposed action and/or decision will be furnished to the employee. The employee, at his/her option, may furnish a copy to the Union.

Section 3

Reprimands may be maintained in the employee's Official Personnel Folder (OPF) for up to two (2) years. This time period will be stated in the letter of reprimand. The period of retention may subsequently be reduced when the employee's supervisor determines that circumstances warrant a shorter period. Such determination may be made in response to an employee's request to remove the reprimand from the employee's OPF. Letters of reprimand which have been overturned as the result of a grievance or other authority shall be immediately removed from the employee's OPF.

Section 4

The Employer may suspend an employee for fourteen (14) calendar days or less, for such cause as will promote the efficiency of the service.

Cause will include, but not be limited to, discourteous conduct to the public confirmed by an immediate supervisor's report of such instances within any one (1) year period or any other pattern of discourteous conduct. To clarify the alleged misconduct(s) and, if necessary, help correct employee behavior, the supervisor will discuss the pattern of conduct in a timely fashion with the employee.

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

A written notice of a proposed suspension of fourteen (14) calendar days or less will be provided to the employee, and will inform the employee of:

- a. the proposed action;
- b. the specific reasons for the proposed action;
- c. the opportunity to review the evidence relied upon to support the charges;
- d. the time to reply and to whom to furnish affidavits and other documentary evidence in support of the reply;
- e. the right to be represented by the Union;
- f. the right to reply orally and/or in writing within fifteen (15) calendar days from the receipt of the proposal notice.

The Employer will issue a final written decision after receipt of the employee's written and/or oral reply, or the termination of the fifteen (15) calendar day reply period. The decision letter will identify the reasons and specifications sustained, and will address factual disputes, if any, raised in the employee's reply by stating the reasons why each factual dispute was rejected.

Section 5

When the employer proposes to suspend an employee for more than fourteen (14) calendar days, the following procedures will apply:

Unless otherwise provided by law (e.g., the crime provision of 5 USC 7513 (b)), an employee who receives a proposal for an adverse action is entitled to at least thirty (30) calendar days' advance written notice which informs the employee of:

- a. the proposed action,
- b. the specific reasons for the proposed action,
- c. the opportunity to review the evidence relied upon to support the charges,

- d. the time to reply in writing and/or orally, and to whom to furnish affidavits and other documentary evidence in support of the reply,
- e. the right to be represented by the Union, an attorney, or other representative.

The Employer will issue a final decision following the receipt of the written and/or oral reply. The final decision letter will state which reasons and specifications are sustained and will address factual disputes raised in the employee's reply.

Action by the Deciding Official:

After carefully considering the proposal letter, evidence of record, and the employee's response, if any, including any mitigating factors, the deciding official shall decide:

- a. to rescind the proposed action;
- b. to mitigate the proposed action;
- c. to propose alternative discipline, or
- d. to sustain the proposed action.

If discipline is imposed, the decision letter will inform the employee of his/her option to appeal the action to the Merit Systems Protection Board (MSPB) or grieve through the negotiated grievance procedure, but not both; and that the employee will be deemed to have exercised his/her option to raise the matter under one procedure or the other at the time the employee timely files a written grievance or files a notice of appeal under the applicable MSPB procedures.

Section 6

Any of the time limits set forth in this Article may be extended by mutual agreement of the Parties in writing.

**ARTICLE XXXII
GRIEVANCE PROCEDURES**

Section 1

A grievance means any complaint:

- a. by an employee(s) concerning any matter related to the employment of the employee;
- b. by the Union concerning any matter relating to the employment of an employee; or
- c. by any employee(s), the Union or the Employer concerning: The effect or interpretation, or

claim of breach, of a Collective Bargaining Agreement; or any claimed violation of, misinterpretation or misapplication of any law, rule, or regulation affecting conditions of employment.

Section 2

The following matters are excluded from the scope of this procedure:

- a. any claimed violation of 5 USC, Chapter 73, pertaining to prohibited political activities;
- b. retirement, life insurance, or health insurance;
- c. A suspension or removal under 5 USC, Section 7532 relating to National Security;
- d. Any examination, certification, or appointment;
- e. The classification of any position, which does not result in the reduction in grade or pay of any employee,
- f. Grievances asking for a change to established personnel policies and practices or contract provisions which are properly subject to negotiations between the Station and the Union;
- g. Non-selection for promotion from a group of properly ranked and certified candidates;
- h. An action terminating a temporary promotion within a maximum period of two (2) years and returning the employee to the position that is not a lower grade or level than the position from which he or she was temporarily promoted;
- i. Non-adoption of a suggestion;
- j. A preliminary verbal warning or notice of a specific action which, if effected, will be otherwise grievable or appealable;
- k. Termination of a probationary employee during the probationary period,
- l. The content of a published agency regulation and policy when such policy or regulation conform with Management's rights in accordance with 5 USC.
- m. Any other action for which the desired relief may be obtained through the established rules and regulation of the Federal Labor Relations Authority (FLRA), except allegations of Unfair Labor Practices which may be raised under this grievance procedure or under the procedures of the Authority, but not both.

Section 3

Grievances may be initiated by employee(s) covered by the agreement and/or their Union representative, or the Employer. Representation of Bargaining Unit Employees shall be the exclusive province of the Union. This is the exclusive procedure available to Bargaining Unit Employees, the Union, and the Employer for the resolution of grievances. Bargaining Unit Employees filing a grievance under this procedure may represent themselves or be represented by a designee of the Union. When the grievant represents himself or herself, the Union representative participation will exclude specific merits of the subject grievance and will be limited to general issues applicable to the Bargaining Unit as a whole. Employees may grieve matters covered by Section 2302(b)(1), 4303 and 7512 of 5 USC, under this procedure, or under the statutory appeal procedure, but not both. Upon the filing of a grievance, whether an employee is self-represented or represented by a designee of the Union, the Union shall have the right to be present at any phase of the grievance proceeding. Where the grievant elects Union representation, meetings, and communications with regard to the grievance and any attempts at resolution shall be made through the designated representative.

Section 4

The Parties agree that grievances should be settled at the lowest possible level of management in an orderly, prompt, and equitable manner so as to contribute to the morale of the employees and the efficient conduct of business at the AFRS.

Section 5

The following procedures will be used in processing grievances under this agreement:

- a. **FIRST STEP.** A grievance shall be initiated within twenty (20) calendar days after the date of an incident or from the date the grieving party could be expected to know of a circumstance giving rise to the grievance. For Bargaining Unit Employees, the grievance shall be filed, in writing, with the immediate supervisor. The grievance shall state the matter being grieved and any relief sought. The supervisor shall meet with the employee and/or his/her representative within fifteen (15) calendar days of the date of the grievance filing and attempt a resolution. The employee and/or representative will be provided a written decision on the grievance no later than seven (7) calendar days from the date of the meeting. Any decision rendered under this Section shall specifically state the nature of any remedy granted or denied, and the grievant's further rights under this procedure.
- b. **SECOND STEP.** If any grievance remains unresolved as a result of the First Step proceedings, the grievant may, within ten (10) calendar days of receipt of the first step decision, advance the grievance to the Director of AFRS or the next level of supervision. A meeting with the grievant and/or his/her representative will be held within twenty (20) calendar days of the Second Step filing, and a decision rendered, in writing, within ten (10) calendar days of the meeting. The decision shall specify the nature of any remedy granted or denied, and the grievant's further rights under this procedure.

- c. **THIRD STEP.** Any grievance not resolved in the first two steps of this procedure may be elevated to the Director, AFRS or the Area Director, NAA, whoever is appropriate, for review and decision. The grievance shall be submitted within twenty (20) calendar days of the receipt of the Second Step decision. The Third Step official shall consider the grievance, make appropriate inquiries as necessary, and render a decision not later than twenty-five (25) calendar days after receipt of the Third Step filing.
- d. **UNION GRIEVANCES.** Any grievance filed by the Union shall be filed within the time limit for First Step filing. If the Union grievance is filed with an Agency official above the Station's Director, the Union will provide an information copy to the Station Director. Union grievances will be filed, in writing, at the level of the Agency that has the authority to render a binding decision. If a grievance is filed with an official without such authority, the grievance will be forwarded by that official to the appropriate person and the Union advised as to the transfer of the grievance. The parties to the grievance shall meet within ten (10) calendar days of receipt or forwarding of the grievance and attempt resolution. A written decision shall be rendered within fifteen (15) calendar days of such a meeting. If the grievance official is at a level below the Director, AFRS, and the grievance is not resolved, the Union may elevate the grievance within fifteen (15) calendar days to the Director, AFRS, for review and decision. The parties shall meet to discuss the grievance, and a written decision on the matter will be rendered no more than fifteen (15) calendar days after that meeting. The decision of the Director, AFRS, or the Area Director, NAA, whoever is appropriate, shall be the final step in the grievance procedure. Parties may, however, invoke the arbitration clause at their discretion.
- e. **EMPLOYER GRIEVANCES.** Employer filed grievances shall be initiated with the Vice-President of the Local or a designee of the Union specified in writing. Within fifteen (15) calendar days of receipt of the grievance, the Local Vice-President or designee shall meet with the Employer's agent to attempt resolution of the grievance. A decision, in writing, on the matter will be rendered not more than fifteen (15) calendar days after the meeting, and the decision shall be the final step in the grievance procedure. Parties may, however, invoke the arbitration clause at their discretion.

Time limits specified in this article may be extended by mutual written consent of the Union and the Employer to a specified date. Failure of the Employer or Union to render a decision within the time limits specified in this article shall result in a resolution of the grievance in favor of the grieving party, provided the remedy requested is lawful and not contrary to a provision of this agreement. The date of any decision under this article shall be determined by the date of receipt by the moving party.

Section 6

Any issue concerning the grievability of a matter raised in this procedure shall be raised by the time a Third Step decision is rendered. If either party should raise an issue as to grievability, the original grievance shall be considered as amended to include the issue. All disputes of grievability or arbitrability shall be raised as a threshold issue should the hearing proceed to

arbitration. Should the arbitrator determine the matter is not grievable/arbitrable, the case will be closed, and the arbitrator shall not go into the merits of the case.

Section 7

Employees and their Union representative shall be entitled to reasonable official time without charge to leave or loss of pay for all phases of grievance and/or appeal investigations and preparation related to the procedures, provided the matter being grieved/appealed may result in disciplinary actions, adverse actions, or performance-based actions toward an employee.

Grievance hearing officials shall schedule meetings in a manner to coincide with the regular working hours of the grievant and their Union representatives.

ARTICLE XXXIII ARBITRATION

Section 1

Any grievance not considered satisfactorily resolved within the grievance procedure may be submitted to arbitration. Filings for arbitration may be made only by the Union or the Employer. Notice of intent to file for arbitration must be provided to the opposite party within thirty (30) calendar days of filing the notice of intent to invoke arbitration. The moving party shall request a listing of seven (7) impartial persons from the Federal Mediation Conciliation Service.

Section 2

Within ten (10) calendar days of receipt of the list, the moving party shall contact the opposite party and seek agreement on one person from the list to act as arbitrator in the matter. Should the parties disagree as to the person, each party shall strike one name from the list until one remains, and that person shall hear the matter. The right to a first strike will be determined by a coin toss. The moving party shall advise the FMCS as to the person selected.

Section 3

Upon being contacted by the arbitrator, the parties shall agree to a date for hearing in the matter. The hearing shall be held on the Employer's premises and during duty hours of the grievant. Either party may call witnesses for the hearing, as they deem appropriate. Disputes concerning witnesses shall be referred to the Arbitrator for decision prior to the date of hearing. The grievant and his/her Union representative shall be entitled to official time without charge to leave or loss of pay for the purpose of preparing for and presenting the case at hearing in accordance with 5 CFR 752. The grievant and his/her representative shall be entitled to the same arrangements as Union requested witnesses.

Section 4

Procedures concerning the order of hearing shall be as determined by the Arbitrator in the event the parties cannot agree. Normally, in disciplinary and adverse action cases, and in any case where the grievant has been denied or deprived of a benefit, the moving party shall be the Employer.

Section 5

The cost of arbitration, defined as the Arbitrator's fees and his/her appropriate expenses, shall be born as follows: losing party pays 75% and winning party pays 25%. In the event there is a split decision by the Arbitrator, the cost will be divided equally between the Parties. Should either party desire a transcript of the proceedings, that party shall be responsible for its cost except the Union may request and be provided a copy of that document under the provision of 5 USC, Chapter 71, Section 7114.

Section 6

The Arbitrator shall be unimpeded in his/her duties and shall render a decision on the matter within thirty (30) days after the closing of the record unless the parties agree to other arrangements. A copy of the decision shall be furnished to each of the parties, along with an original bill or invoice for services rendered. The bill or invoice shall contain either a Social Security Number or Employer Identification Number.

Section 7

The decision of the Arbitrator is binding except that either Party may file an exception to the award with the FLRA as permitted by law and regulation.

ARTICLE XXXIV CONTRACTING OUT

Section 1

The Union recognizes Management's right to make determinations with respect to the contracting-out of work performed by Bargaining Unit Employees under 5 CFR 7106(a)(2)(B) and Office of Management and Budget (OMB) Circular A-76.

Management agrees to give reasonable advance notice to the Union when it determines the need for a commercial activity review under OMB Circular A-76. When Management has decided to contract out work, it will notify the Union and provide to the Union, upon request, that information concerning the decision, which is disclosable under the Freedom of Information Act.

The Union and Management recognize the importance of employee participation in any competitive sourcing study that involves Bargaining Unit Employees in order to assure the best outcome of the commercial activity study for the employees and the Agency.

Section 2

Upon receipt of notification of Management's decision to contract-out work according to OMB Circular A-76 which is presently being performed by Bargaining Unit Employees, the Union may, within fifteen (15) calendar days, request negotiations concerning the impact and implementation on Bargaining Unit Employees. Negotiations will begin within twenty (20) calendar days of the written request.

ARTICLE XXXV REDUCTION IN FORCE (RIF), REORGANIZATION AND TRANSFER OF FUNCTION

Section 1

In the event of a reduction in force and/or transfer of function at AFRS which involves Bargaining Unit Employees, Management will notify the Union in writing and fulfill its obligation to bargain the impact and implementation consistent with 5 USC 71.

Section 2

If an informational notice is issued, Management will provide the following information to the Union, as early as possible before it issues the informational notice to employees.

- a. The nature of the Reduction in Force (RIF) action being considered [e.g., transfer of function, abolishment of position.].
- b. The reason for the action.
- c. The anticipated effective date.

Section 3

If an informational notice has been issued, Management will provide the following information to the Union as soon as possible prior to issuing the specific notice to the employees:

- a. types of positions;
- b. locations; and
- c. names of employees or changes to that list, should they occur.

If no informational notice has been issued, Management will provide the information to the Union as soon as possible prior to issuing specific notices to employees. Management will

provide a specific notice of not less than sixty (60) calendar days to individual employees who will be affected by a RIF action.

Section 4

The Union agrees to keep all information under this Article confidential until such time as the employees receive their official notification.

**ARTICLE XXXVI
CONCERTED ACTIVITY**

Section 1

The Union agrees that it will not encourage, initiate, participate or condone strike, work stoppage or slowdown on the part of a Bargaining Unit Employee or group of Bargaining Unit Employees. The Parties agree that stoppage or slowdown would harm or adversely affect the operations or missions of the Station; and the Union will not condone such activity by failing to take affirmative actions to prevent or stop it.

Section 2

Management agrees that it will not lockout Bargaining Unit Employees.

**ARTICLE XXXVII
DUES WITHHOLDING**

The allotment of dues through payroll withholding, including the overall procedures and costs for affecting the allotment, shall be subject to and conducted in accordance with the current Memorandum of Understanding between the USDA and AFGE.

**ARTICLE XXXVIII
AMENDMENTS**

This agreement can be amended at the mutual agreement of both parties using standard negotiation procedures.

**ARTICLE XXXVIX
DURATION**

Section 1

The effective date of this Agreement, and any supplement or amendment thereto, shall be the date of its approval by the Director of Personnel, USDA. Any Agreement not approved or referred to the Parties for further negotiation by the thirtieth (30th) calendar day after execution

by the Parties shall become effective on the thirtieth (30th) day. The Agency agrees to notify the Union within thirty (30) days if any provisions of this Agreement, as submitted for approval, are deemed to violate or conflict with rules or regulations of ARS that are not required by higher level authority.

Section 2

This Agreement shall be in full force and effect for a period of three (3) years from the date of approval. Either Party may give written notice to the other, not more than ninety (90) calendar days or less than sixty (60) calendar days prior to the three (3) year expiration date for the purpose of renegotiating this Agreement. Upon such notice, negotiations shall commence, not later than thirty (30) calendar days prior to the expiration date, except by mutual consent when either party presents written notice of scheduling problems. If neither party serves notice to renegotiate this Agreement, the Agreement shall be automatically renewed for an additional one (1) year period subject to the other provisions of the Article. The specific changes proposed shall be included in the written notice.

Section 3

Upon approval, this Agreement will supersede and cancel all previous formal and informal agreements, and will serve as the sole Agreement between parties

ARTICLE XL INFORMATION AND PUBLICITY

Section 1

Management agrees to provide a copy of this Agreement, in booklet form, to each Bargaining Unit Employee and to new Bargaining Unit Employees who are hired during the life of the Agreement.

Section 2

Management agrees to allow reasonable space for the posting of Union literature and material on presently designated official bulletin boards.

Section 3

Management agrees to publish the names, work locations, and telephone numbers of the Union Vice President and stewards in the telephone directory as revised on a semi-annual basis.

Section 4

The Union agrees to provide the Station a current list of the names, addresses, and telephone numbers of its representatives.

ARTICLE XLI REPRODUCTION AND DISTRIBUTION OF AGREEMENT

Section 1

Copies of this Agreement shall be provided by AFRS to employees who are currently members of the Bargaining Unit. The Union shall be furnished a reasonable number of copies, not to exceed fifty (50) to meet its needs. It shall also be furnished with a copy on a computer disk.

Section 2

The Agency shall bear one hundred percent (100%) of the cost of printing and distributing the agreement.

Section 3

If any Bargaining Unit Employee requires special accommodations to be able to read or hear this Agreement, the Station shall provide equipment and supplies necessary to record this Agreement on an audio tape consistent with rules and regulations governing reasonable accommodation. The Union shall provide readers to record this Agreement on audio tape. Such recording shall be done while on official time. The audio tape will be approved by the parties prior to distribution.

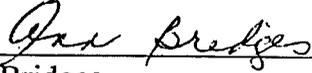
Section 4

The Agreement shall be printed on 8 ½ x 11-inch paper. It shall have a font size not smaller than ten (10) point typeface. It will have a table of contents and an index of articles.

Every Section of every Article shall have a numbered header.

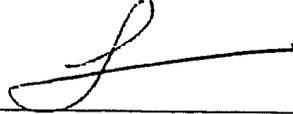
ENDORSEMENTS / SIGNATURE PAGE

For the Agricultural Research Service



Ann Bridges
Labor Relations Specialist, ARS
Chief Negotiator

For AFGE Local 43



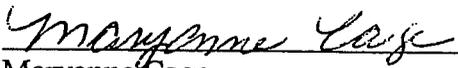
Carl Gentile
National Representative, AFGE
Chief Union Negotiator



Dariusz Swietlik
Director/Research Leader
Appalachian Fruit Research Station
Negotiator



Wilbur Hershberger
Vice President, AFGE Local 43
Negotiator



Maryanne Cage
Location Administrative Officer
Appalachian Fruit Research Station
Negotiator



Sharon Jones
Chief Steward
Negotiator



John Crew
Deputy Area Director, NAA
Negotiator



Mark Demuth
Steward
Negotiator

Approved by the Department on September 15, 2003

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